# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

PRIME TIME TOYS, LTD.,	)
71.1.100	) 2008-CV-2909 (NRB/GWG)
Plaintiff,	)
	) NOTICE OF MOTION
V.	)
	) ECF CASE
JAKKS PACIFIC, INC.,	)
	)
5.0.1	)
Defendant.	)

PLEASE TAKE NOTICE that upon the Declaration of Larry Miller dated August 20, 2008, and the exhibits annexed thereto, and the accompanying Memorandum of Law, and upon all pleadings and proceedings heretofore had herein, defendant JAKKS Pacific, Inc. will move this Court, before the Hon. Naomi R. Buchwald, at the Courthouse thereof located at 500 Pearl Street, New York, New York, on the 24<sup>th</sup> day of September, 2008 at 3:30 P.M. or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(c) of the Federal Rules of

Civil Procedure declaring independent claim 13 of U.S. Patent No. 7,281,642 invalid for failure to comply with the requirements of 35 U.S.C. § 112, paragraph 1 and for such other and further relief as this Court deems just and necessary.

Dated: New York, New York August 20, 2008

FEDER, KASZOVITZ, ISAACSON, WEBER, SKALA, BASS & RHINE LLP

By: <u>/s/ Larry Miller</u>
Larry Miller (LM-8323)

Attorneys for Defendant, JAKKS Pacific, Inc. 750 Lexington Avenue New York, New York 10022 (212) 888-8200

r:\wpdoc\lm\JAKKS motion to dismiss - Notice of Motion.doc

UNITED STATES DISTRICT COURT	
SOUTHERN DISTRICT OF NEW YORK	<

PRIME TIME TOYS, LTD.,	)
Plaintiff,	) 2008-CV-2909 (NRB/GWG) )
V.	) ECF CASE
JAKKS PACIFIC, INC.,	) ) )
Defendant.	)

### **DECLARATION OF LARRY MILLER**

LARRY MILLER declares, pursuant to 28 U.S.C. § 1746, as follows:

- I am an associate at Feder, Kaszovitz, Isaacson, Weber, Skala, Bass &
   Rhine LLP, counsel for defendant in this matter.
  - 2. Attached hereto as Exhibit A is a copy of the complaint herein.
- 3. Attached hereto as Exhibit B is a copy of the answer and counterclaims herein, with attachments including Exhibit 5 thereto, the File Wrapper of U.S. Pat. No. 7,281,642 ("the '642 Patent").
- 4. For the convenience of the Court, attached hereto as Exhibit C is a copy of the File Wrapper of the '642 Patent, a copy of Exhibit 5 of Defendant's answer and counterclaim, except that it is paginated.
- 5. Attached hereto as Exhibit D is a copy of Plaintiff's answer to the counterclaims.
- 6. Attached hereto as Exhibit E is a copy of U.S. Pat. No. 5,928,053 ("Henderson").

7.	Attached hereto as Exhibit F is a copy of U.S. Pat. No. 4,597,527
("Sands").	

8. Attached hereto as Exhibit G is a copy of U.S. Pat. No. 5,231,951 ("Tagar").

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York August 20, 2008

/s/ Larry Miller
LARRY MILLER

r:\wpdoc\jdh\ptt mtdfrcp12c- Miller Declaration.doc

# EXHIBIT A

# JUDGE BUCHWALD

Neil M. Zipkin (NZ 4718) Chester Rothstein (CR 1417) Michael P. Kenney (MK 0740) Amster, Rothstein & Ebenstein LLP 90 Park Avenue New York, New York 10016 (212) 336-8000

Attorneys for Plaintiff Prime Time Toys, Ltd. 08 CV 2909

PRIME TIME TOYS, LTD,	SOUTHERN DISTRICT	TRICT COURT OF NEW YORK MAR 192008
v.	Plaintiff	Civil Action No.:ECF Case
JAKKS PACIFIC, INC.,	Defendant.	: : : :

## **COMPLAINT**

Prime Time Toys, Ltd. (hereinafter referred to as "PTT") through their attorneys, complaining of Jakks Pacific, Inc. (hereinafter referred to as "Jakks Pacific"), alleges as follows:

### THE PARTIES

Plaintiff PTT is a corporation duly organized and existing under the 1. laws of Hong Kong, having offices and places of business at Suite 5,2/F, Kwong Sang

Hong Centre, Kwun Tong, Hong Kong and 200 Wanaque Avenue, Suite 101, Pompton Lakes, NJ 07442. PTT is transacting and doing business within this judicial district.

- 2. Upon information and belief, defendant Jakks Pacific is a corporation organized and existing under the laws of the State of Delaware, having a principal office at 22619 Pacific Coast Hwy, Malibu, CA 90265 and an office at 11 East 26<sup>th</sup> Street, New York, NY 10010.
- 3. This action arises under the patent laws of the United States, 35 U.S.C. § 100 *et seq*. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§1331 and 1338.
  - 4. Venue is proper pursuant to 28 U.S.C. §§1391 and 1400(a).
- 5. Upon information and belief, Exhibit A is a true and correct photograph of two floating squirting toys offered for sale, sold and/or imported into the United States by Defendant Jakks Pacific, this toy hereinafter referred to as "the CREATURE CANNON".
- 6. Upon information and belief, Exhibit B is a true and correct printout of a website offering for sale the Jakks Pacific CREATURE CANNON and offering the option, by drop-down menu, to ship the CREATURE CANNON within New York State and this judicial district.

- 7. Upon information and belief, Jakks Pacific has an office within the State of New York and within this judicial district, has offered to sell the CREATURE CANNON within the State of New York.
- 8. Upon information and belief, Jakks Pacific annually participates as an exhibitor at the Toy Industry Association, Inc. (hereinafter "TIA"), Toy Fair held at the Jacob Javits Center on 11th Avenue between West 34th Street and West 39th Street. Upon information and belief, Jakks Pacific offered the CREATURE CANNON for sale at the TIA Toy Fair from February 17-20, 2008 and orders for the CREATURE CANNON were taken at the 2008 TIA Toy Fair.
- 9. By way of example only and without limitation, upon information and belief, Jakks Pacific has directly and/or indirectly, through the internet, convention participation, distributors, retailers, an agent and/or otherwise, offered for sale, sold and/or delivered the CREATURE CANNON, including within the State of New York and this judicial district.
- 10. Upon information and belief, Jakks Pacific derives substantial revenue from interstate commerce.
- 11. The aforementioned actions subject Jakks Pacific to personal jurisdiction under New York's "long arm" statute, C.P.L.R. §302, and the exercise of such jurisdiction comports with due process.
- More specifically, upon information and belief, the aforementioned 12. acts constitute Jakks Pacific transacting business within the State of New York,

3

contracting to supply goods in the State of New York and/or committing a tortious act outside the State of New York causing injury to person or property within the State of New York with the expectation or reasonable expectation that the tortious act will have consequences in the State of New York.

13. This Court has personal jurisdiction over defendant Jakks Pacific under Rule 4 of the Federal Rules of Civil Procedure, in that Jakks Pacific is domiciled within the State of New York and this judicial district, has committed acts of patent infringement within the State of New York and this judicial district and has committed acts of patent infringement having effects within the State of New York and this judicial district.

### **BACKGROUND**

- 14. PTT is engaged, inter alia, in the design, manufacture, marketing, distribution, and sale of toys. PTT sells toys to retailers and distributors.
- 15. PTT currently sells in the United States a toy under the trademark "MAX LIQUIDATOR". A true and correct copy of packaging material for PTT's MAX LIQUIDATOR is attached as Exhibit C.
- On October 16, 2007, the U.S. Patent and Trademark Office issued 16. U.S. Patent No. 7,281,642 B2, which is entitled "SQUIRTING TOY" (hereinafter "the '642 Patent"). The '642 Patent is valid and subsisting and is entitled to a presumption of validity under 35 U.S.C. §282. A true and correct copy of the '642 Patent is attached as Exhibit D.

- 17. PTT is the sole owner of the '642 Patent.
- 18. MAX LIQUIDATOR is a commercial embodiment of the '642 Patent.
- 19. Every MAX LIQUIDATOR sold by PTT in the United States has been marked "U.S. Patent No. 7,281,642" since shortly after issuance of the '642 Patent in October 2007.
- 20. Upon information and belief, Jakks Pacific offered to sell, sold and shipped the CREATURE CANNON to distributors and retailers. Exhibit E is a true and correct copy of a sales receipt for 2 CREATURE CANNONS purchased on February 9, 2008.
  - 21. The CREATURE CANNON infringes the '642 Patent.
- 22. Upon information and belief, Jakks Pacific has sold, offered to sell or imported in or into the United States the CREATURE CANNON knowing the CREATURE CANNON is an infringement of the '642 Patent.
- 23. On or about February 21, 2008, PTT notified Jakks Pacific of the rights conferred to PTT by the '642 Patent and the infringement of these rights by the CREATURE CANNON. By this letter, PTT also demanded cessation of sale, offers for sale, importation and distribution of JAKKS PACIFIC CREATURE CANNON and all similar products that infringe the '642 Patent. A true and correct copy of PTT's letter of February 21, 2008 is attached as Exhibit F.

393178.1 5

24. Upon information and belief, Jakks Pacific's commercial activities relating to the making, using, offering for sale, selling, and/or importing into the United States the CREATURE CANNON have continued and are continuing with knowledge of the '642 Patent, in spite of the objectively high likelihood that Jakks Pacific's actions constitute infringement of the '642 Patent. These commercial activities are, at a minimum, in reckless disregard of PTT's rights under the '642 Patent. Such acts of infringement have therefore been intentional, deliberate and willful.

## COUNT I PATENT INFRINGEMENT BY JAKKS PACIFIC OF U.S. PATENT NO. 7,281,642

- Paragraphs 1 through 24 of this Complaint are incorporated as if set 25. forth in their entirety here.
- 26. Jakks Pacific has infringed and is still infringing the '642 Patent by manufacturing, importing, selling and/or offering for sale the CREATURE CANNON and/or other tovs which embody the subject matter claimed in the '642 Patent.
- 27. Jakks Pacific has actively induced others to infringe the '642 Patent by the sale, offer for sale, importation and/or use of the JAKKS PACIFIC CREATURE CANNON, JAKKS PACIFIC CREATURE CANNON and/or other toys which embody the subject matter claimed in the '642 Patent.
- 28. Jakks Pacific has sold, offered to sell or imported in or into the United States the CREATURE CANNON knowing these toys infringe the '642 Patent.

Thus, Jakks Pacific is contributorily infringing the '642 Patent by its actions with regard to the CREATURE CANNON.

- 29. Upon information and belief, Jakks Pacific had notice of the '642 Patent as early as approximately October 2007.
- Upon information and belief, Jakks Pacific had actual notice of the 30. '642 Patent at least as early as February 21, 2008.
- 31. This is an exceptional case within the provisions of 35 U.S.C. §285 and, accordingly, PTT is entitled to an award of reasonable attorney's fees.
- 32. PTT has suffered monetary damage as a result of Jakks Pacific's acts complained of herein, in an amount thus far not determined.
  - PTT has no adequate remedy at law. 33.

### PRAYER FOR RELIEF

WHEREFORE, PTT pray for judgment that:

- This Court declares that Jakks Pacific has infringed U.S. Patent A. No. 7,281,642 ("the '642 Patent") and that such infringement has been willful;
- В. Jakks Pacific and its officers, agents, servants, employees and attorneys and any and all persons in active concert or participation with Jakks Pacific, be enjoined from making, using, offering for sale,

- selling, and/or importing into the United States toys that infringe the '642 Patent;
- C. Jakks Pacific and its officers, agents, servants, employees and attorneys and any and all persons in active concert or participation with Jakks Pacific, be enjoined from inducing infringement of the '642 Patent or contributorily infringing the '642 Patent;
- D. PTT be awarded damages adequate to compensate PTT for Jakks

  Pacific infringement of the '642 Patent, including PTT's profits lost
  as a result of infringement of the '642 Patent, and that the damages
  be enhanced due to the willfulness of the infringement, in
  accordance with 35 U.S.C. §284;
- E. Jakks Pacific be ordered to deliver up for destruction all toys in their possession, custody or control that infringe the '642 Patent;
- F. This case is exceptional under 35 U.S.C. §285 and that PTT be awarded their costs and attorney's fees, pursuant to 35 U.S.C. §285; and
- G. PTT be awarded such other and further relief as the Court deems just and equitable.

## **Jury Demand**

PTT hereby demand a trial by jury as to all issues so triable.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN, LLP 90 Park Avenue New York, New York 10016 Telephone No.: (212) 336-8000

Attorneys for Prime Time Toys, Ltd.

Dated: March 19, 2008

Neil M. Zipkin (NZ 4718)

Chester Roghstein (CR 1417) Michael P. Kenney (MK 0740)

393178.1

9

# Exhibit A



# Exhibit B

# **Opentip**

Premium shopping. Factory outlet price.

Activities & Learning » JAK-00315





i lickets i i i i i i i i i i i i i i i i i i i	Sporting Goods & Events Tickets	8	Home & Garden	Musical Instruments	Electronics & Computers			Gift & Promotion
---	--	---	------------------	------------------------	-------------------------	--	--	---------------------

Search: All Categories

My Account | Cart ■Order Hotline Top » Home & Garden » Toys & Games » **Contents | Checkout** 

877-673-6847

**JAKKS CREATURE CANNON(Price per** each), Activities & Learning, Toys & Games, Home & Garden

781-583-7536

GO

**Call Us Online** 

Have



**JAK-00315** Questions?

Price: \$4.36



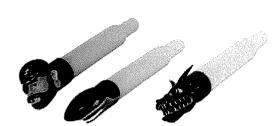


Notify me of updates to **JAKKS** CREATURE CANNON (Price per

each), Learning, Toys & Games,

Tell A Friend

Activities & Home & Garden



Click to enlarge

Quantity:

\* Click "Add to Shopping Cart" to calculate shipping.

# **Product Description**

Minimum order 3 packs.

NO BREAKING OF CASES WHERE A CASE QUANTITY IS DETERMINED.OTHERWISE YOUR ORDER WILL BE DENIED

Creature Cannon America's #1 selling pool toy. Drenching pool fun! Squirts water over 30 feet! Comes with 3 unique creature heads in a colorful counter display.

Reviews

this product!

Tell someone you know about this

product.

Master Pack of 12

# **Optional Related Products**



Dot Richardson Prints, Activities & Learning, Toys & Games, Home & Garden Model: GIR-DR5 \$7.36



Bulging Brains,Action Figures Model: GAL-LL21007 \$11.64



Safari,Activities & Learning Model: FLA-SAF9OV \$314.74



ABC123,Activities & Learning Model: FLA-ABC1215 \$499.28



Dot Richardson Go for It! Prints, Activities & Learning, Toys & Games, Home & Garden Model: GIR-DR3 \$7.36



Left Brain™,Activities & Learning,toys&games Model: BAB-20029 \$16.59

#### **Customer Reviews**



There are currently no product reviews.

Top » Home & Garden » Toys & Games » Activities & Learning » JAK-00315

Shipping & Returns | Privacy Notice | Site Map | About Us | Contact Us | Reseller | Affiliate |

Catalog Download | Links

Premium Shopping. Factory Pricing.

Copyright © 2005 - 2008 Opentip.com

# **Opentip**

Premium shopping. Factory outlet price.





	Sporting Goods & Events Tickets		Home & Garden	Musical Instruments	Electronics & Computers			Gift & Promotion
--	--	--	------------------	------------------------	----------------------------	--	--	---------------------

Search: All Categories

60

#### **Top » Cart Contents**

Order Hotline

877-673-6847

781-583-7536

**Call Us Online** 

# What's In My Cart?

Remove Model Product(s)

JAK-00315 JAKKS CREATURE CANNON(Price per Toys & Games, Home & Garden (Out of Stock Temporarily, Explore, Sea



- \* We're sorry! The product you have chosen is currently unavailable for purch
- \* Products marked with "OUT OF STOCK" indicate that we are temporarily ou
- \* Please remove them from your cart then you can purchase other items

Free Shipping Promotion



Continue Shopping



#### Shipping Estimate

Items:

36

Country: United States

State/Province: Pl

# Special Offers

- Scoreboards
- Overstock

Clearance

Monthly

**Promotion** 

Featured

Products

Carrier

**Delivery Methods** 

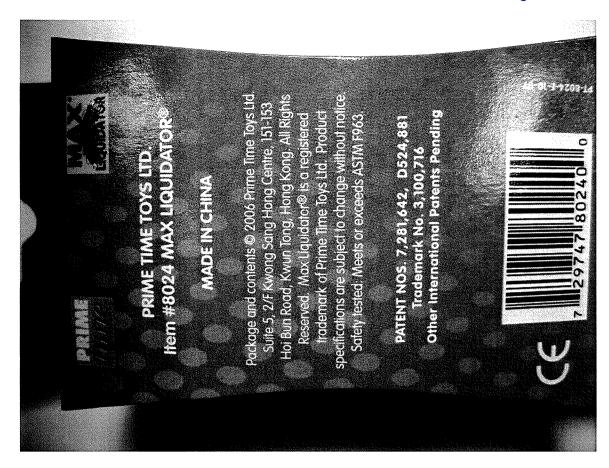
Shipping to US(48 States) ()

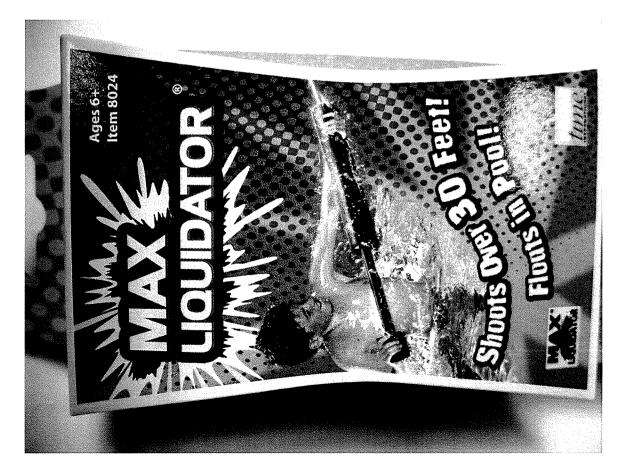
Order Total Estimate

#### Categories

- ▶ Apparel &
- Accessories
  Bulk Sale
- ▶ Electronics &
- Computers
- ▶ Gifts & Promotion
- ▶ Home & Garden
- Jewelry & Watch

# Exhibit C





# Exhibit D



# (12) United States Patent Orlowski

(10) Patent No.:

US 7,281,642 B2 Oct. 16, 2007 (45) Date of Patent:

6	54)	SOI	TID	TIN	JC.	TOY
٠,	J <b>4</b> )	SQU	JIK	. 1 11	"	101

- (75) Inventor: Boguslaw Orlowski, Oceanside, CA
- (73) Assignee: Prime Time Toys, Ltd., Kwun Tong
- (\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 219 days.
- (21) Appl. No.: 10/942,326
- (22)Filed: Sep. 16, 2004

#### (65)**Prior Publication Data**

US 2006/0060604 A1 Mar. 23, 2006

(51) Int. Cl. A63H 3/18 (2006.01)G01F 11/00 (2006.01)A62C 31/02 (2006.01)

- (52) U.S. Cl. ...... 222/79; 222/409; 239/394
- Field of Classification Search ...... 222/79, 222/409; 446/153, 473; 482/55, 111; 92/249 See application file for complete search history.

#### (56)References Cited

U.S. PATENT DOCUMENTS

3/1879 Lewis 213,050 A

D26,839	S		3/1897	Lines	
1,031,526	Α		7/1912	Cloud, Jr.	
1,394,456	Α		10/1921	Wanat	
2,573,375	Α		10/1951	Winstead	
D240,130	S		6/1976	Folke	
4,597,527	Α		7/1986	Sands	
4,627,796	Α		12/1986	Moore	
5,009,413	Α		4/1991	Allen	
5,199,114	Α		4/1993	Christopher	
5,231,951	A	*	8/1993	Tagar et al	114/345
5,266,069	Α	*	11/1993	Thorne	482/111
5,928,053	Α		7/1999	Henderson	
5,992,697	Α		11/1999	James	

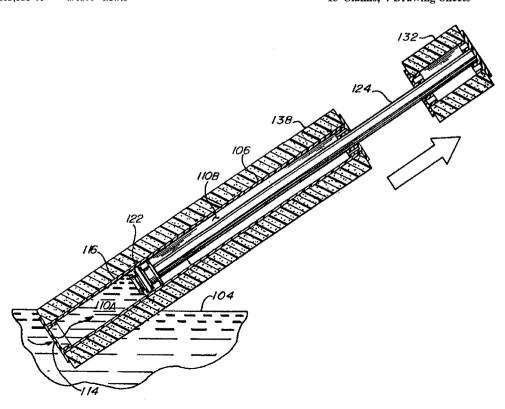
#### \* cited by examiner

Primary Examiner-Gregory L. Huson Assistant Examiner-Kristie A. Mahone (74) Attorney, Agent, or Firm-Amster, Rothstein & Ebenstein

#### (57)**ABSTRACT**

A squirting toy is comprised of a cylindrical housing and a piston that slides within to force water into or out of the housing via a hole therein. The housing is encased within a polyethylene closed cell foam shell. The shell is nonabsorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely when left in water. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool.

#### 13 Claims, 4 Drawing Sheets

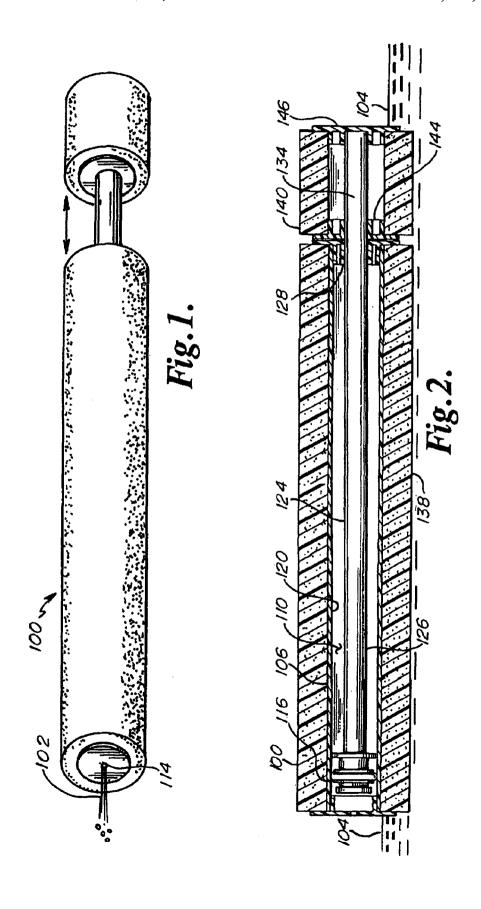


U.S. Patent

Oct. 16, 2007

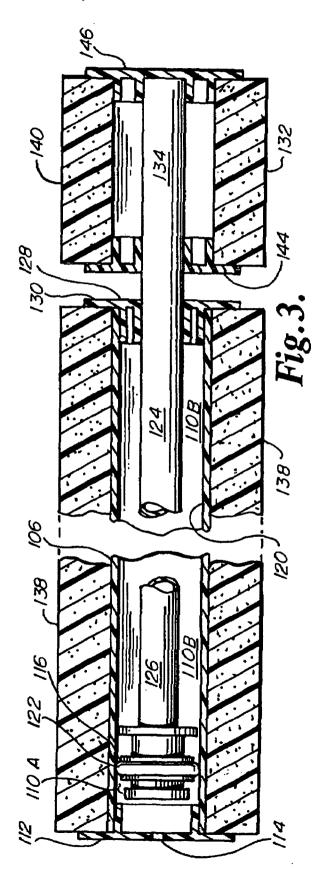
Sheet 1 of 4

US 7,281,642 B2

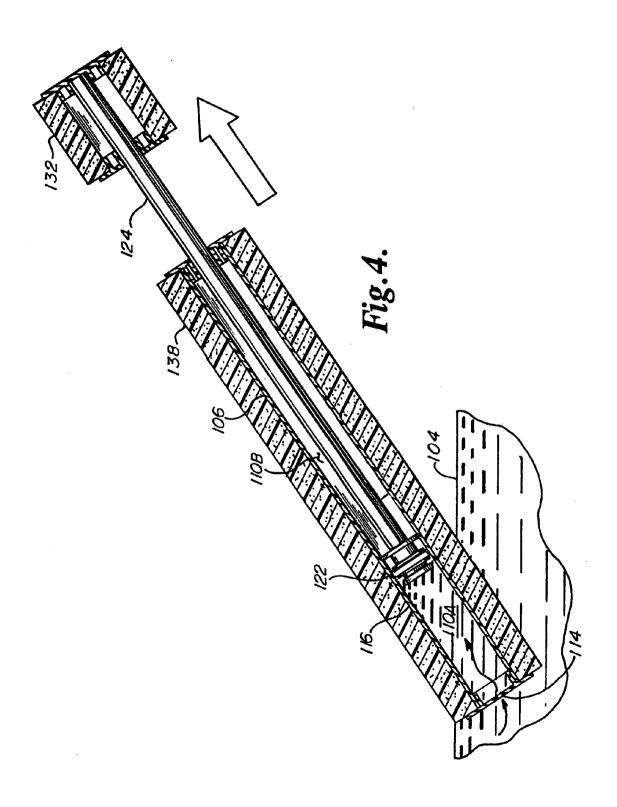


**U.S. Patent** Oct. 16, 2007

Sheet 2 of 4 US 7,281,642 B2



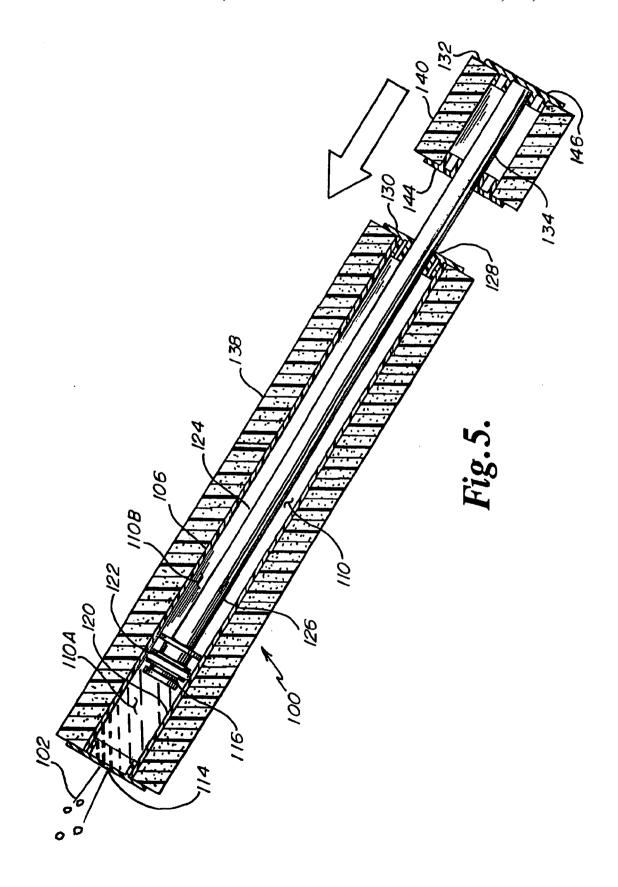
U.S. Patent Oct. 16, 2007 Sheet 3 of 4 US 7,281,642 B2



**U.S. Patent** Oct. 16, 2007

Sheet 4 of 4

US 7,281,642 B2



#### US 7,281,642 B2

#### 1 SQUIRTING TOY

#### FIELD OF THE INVENTION

The present invention is a water squirting apparatus for 5 use at play. More specifically, it is a soft floating tubular piston type squirt gun for use such as in a swimming pool or swimming area by participants in or adjacent to the water.

# BACKGROUND AND OBJECTS OF THE INVENTION

Squirt guns are well known in many forms in the prior art. Numerous squirt guns and squirting toys are made and have been made over the years for use by persons while swimming in or standing adjacent to a swimming pool, which are adapted to quickly take in water from the swimming pool for squirting. One such toy is called Water Stix<sup>TM</sup> and is sold by Hearthsong Inc. This toy, representative of many such squirting toys, is basically comprised of a housing having a nozzle at its squirting end. A piston, which includes a graspable handle, is adapted to slide within the housing so that, when the nozzle end of the housing is submerged in the pool and the piston is pulled backwards, water is drawn into the housing through the nozzle. And when the piston is subsequently forced forwardly, that water is forced from the housing, through the nozzle, towards a target, in a powerful stream

Additionally, many squirt guns of the prior art are constructed in a manner that entraps air and thereby inadvertently enables those guns to partially float in water. The degree of such buoyancy is relative to the amount of water that has been taken into the gun and the longevity of such buoyancy is relative to the amount of air leakage from the housing.

There are also floating toy "swimming noodles" in the prior art, which are made of resilient floating closed-cell polymer foam. These toys are used to provide buoyancy to the user while swimming. Because these toys are often left floating in the pool when not in use, their softness eliminates the safety threat that they would otherwise pose.

It is therefore an object of the present invention to provide an improved squirting toy that floats fully atop the surface of the water, whether filled with or empty of water.

It is a further object to provide a soft squirting toy that is safer that squirting toys of the prior art.

It is a further object to provide a squirting toy that is both buoyant and soft.

It is a further object to provide such a squirting toy that 50 has a similar appearance to a "swimming noodle".

Further objects and advantages of the invention will be apparent upon a review of the following description and drawings of the invention, including the preferred embodiment thereof.

#### SUMMARY OF THE INVENTION

The present invention comprises a squirting toy that is housed within a polyethylene (PE) closed cell foam shell. 60 The closed cell shell is non-absorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool. In the preferred embodiment, the squirting toy is comprised of a cylindrical housing and 65 a piston that slides within to force water into or out of the housing via a hole therein. The foam shell of the preferred

,

embodiment is similar in size and shape to a "swimming noodle", and is therefore more attractive to a child who is familiar with such.

A more complete understanding of the invention will be realized upon review of the following description and drawings of the Preferred embodiment of the invention.

#### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is an action view of a squirting toy according to the preferred embodiment of the invention showing water being expelled there-from.

FIG. 2 is a cross-sectional view through the toy of FIG. 1 in its retracted/empty state.

FIG. 3 is an enlarged partial section of the toy of FIG. 1 floating in water,

FIG. 4 is an action cross-sectional view in showing the intake of water into the toy of FIG. 1, and

FIG. 5 is an action cross-sectional view in showing the expulsion of water from the toy of FIG. 1.

# DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

The Preferred embodiment of the invention is shown in FIGS. 1 though 5, where there is depicted a toy 100 for squirting a water stream 102, and which is adapted to float on the water surface 104.

The toy comprises a rigid tubular housing 106 that encloses a hollow cylindrical chamber 110. The forward end 112 of the tubular housing is closed except for a small hole 114. Piston 116 slides longitudinally within chamber 110 and is sealed against the cylindrical inner surface 120 of the chamber by o-ring 122, which is seated within groove 124 of the piston. The piston separates the chamber 110 into a forward portion 110A and a rear portion 110B. The piston 116 is rigidly connected to shaft 124 at the forward end 126 thereof. Slide bushing 128 supports shaft 124 at the rear end 130 of the tubular housing 106, while allowing longitudinal movement relative thereto. Handle portion 132 is rigidly connected to shaft 124 at the rearward end 134 thereof. Expansion of the handle portion 132 relative to the tubular housing 106, while hole 114 is below the water surface 104, as depicted in FIG. 4, causes water to be inhaled into the expanding forward chamber portion 110A, through hole 114. Subsequent retraction of the handle portion 132 relative to the tubular housing 106 causes that water to be exhaled through hole 114 in a powerful stream 102.

Tubular shell 138, preferably made of closed-cell polyethylene foam, surrounds tubular housing 106, to provide both a soft protective surface and buoyancy. Other materials may be substituted for polyethylene foam, such as ethylene vinyl acetate closed-cell foam.

Handle portion 132 also includes handle shell 140, which is preferable made of the same foam, and is rigidly connected shaft 124 by means of support bushings 144 and 146. Alternatively, other materials having sufficient buoyancy, softness, and water impermeability, such as polyurethane foam, may be used for both the tubular and handle shells. Or the shells could instead be replaced by blow molded or rotationally molded air-filled cylindrical bladders. When the handle portion is retracts as in FIG. 2, the shells create a similar appearance and feel to those of a common "swimming noodle".

It will be appreciated by those skilled in the applicable arts that the foregoing is merely one of many possible

#### US 7,281,642 B2

3

embodiments of the invention, and that the invention should therefore only be limited according to the following claims.

- 1. An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along its entire length when in the contracted configuration, the soft material having a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross section along its entire length when in the contracted configuration.
- 2. The toy of claim 1 wherein said soft material is closed-cell polymer foam.
- 3. The toy of claim 1 wherein said material is closed-cell polyethylene foam.
- 4. The toy of claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.
- 5. A toy for receiving, storing, and squirting water and 20 comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside 25 environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the entire tubular housing from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section 35 along its entire length when said chamber is fully contracted.
- 6. The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. The toy of claim 5 wherein said material is closed-cell polyethylene foam.

- 4
- 8. The toy of claim 5 wherein said material is closed-cell ethylene vinyl acetate foam.
- 9. The toy of claim 5 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 10. The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 11. The toy of claim 5 wherein said material is closed-cell polyethylene foam.
- 12. The toy of claim 5 wherein said material is closed-cell ethylene vinyl acetate foam.
  - 13. A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted.

\* \* \* \* \*

# Exhibit E



\*\*\*

· . . .

# Exhibit F

# Case 1:08-cv-02909-NRB | AMSTER | ROTHSTEIN | & EBENSTEIN LIP

Intellectual Property Law

90 Park Avenue New York NY 10016

Main 212 336 8000 Fax 212 336 8001 Web www.arelaw.com

#### Document 12-3

Partners

Morton Amster
Jesse Rothstein (1934 - 2003)
Daniel Ebenstein
Philip H. Gottfried
Michael J. Berger
Neil M. Zipkin
Anthony F. Lo Cicero
Kenneth P. George
Abraham Kasdan, Ph.D.
Ira E. Silfin
Chester Rothstein

Craig J. Amold

## Filed 08/20/2008

Kenneth M. Bernstein
Joseph M. Casino
Michael V. Solomita
Charles R. Macedo

Senior Counsel
John S. Economou
Marion P. Metelski
Alan D. Miller, Ph.D.

Associates
Patrick Boland\*
Holly Pekowsky

Neil M. Zipkin

Direct 212 336 8120

E-mail nzipkin@arelaw.com

Page 30 of 32

Michael P. Kenney

Max Vern

Brian A. Comack

Richard S. Mandaro

Marc J. Jason

David Mitnick

Charles W. Rath

David A. Boag

Matthieu Hausig

Norajean McCaffrey

Benjamin M. Halpem\*

Jung S. Hahm

Reiko Kaii

Matthew A. Fox Michael J. Kasdan Rebecca R. Eisenberg Stuart Shapley Howard Wizenfeld Steven B. Gauthier Peter R.Vogel Brett M. Pinkus\*

\*Not admitted in New York

February 21, 2008

## via Fax and Federal Express

Legal Department Jakks Pacific, Inc. 22619 Pacific Coast Highway Malibu, CA 90265

Tel: 310-456-7799 Fax: 310-317-8527

Re:

Prime Time Toys, Inc.

Notice of Intellectual Property Rights

Our File: 69281/93

Dear Sirs:

We are U.S. intellectual property counsel to Prime Time Toys, Inc. ("Prime Time"). Prime Time is a designer, manufacturer, and seller of original, innovative high quality toys and games, which Prime Time protects through patents, trademarks, and copyrights. One such toy is the water product sold under the trademark MAX LIQUIDATOR. A representative photograph of the MAX LIQUIDATOR product is attached as Exhibit A.

Prime Time is the owner of U.S. Patent No. 7,281,642 ("the '642 Patent") entitled "Squirting Toy" (a copy of which is attached to this letter as Exhibit B). Additionally, Prime Time is the owner of other U.S. Patents and pending patent applications covering related designs and subject matter, in the U.S. and throughout the world.

Jakks Pacific, Inc.

Case 1:08-cv-02909-NRB

-2-

February 21, 2008

Prime Time has become aware of your company's offer for sale and sale in the United States of the "CREATURE CANNON", one example of which is shown below:





Prime Time is also aware of several modifications of the CREATURE CANNON involving the head disposed over the squirting end of the toy. The CREATURE CANNON, in all modified forms we have seen, violates Prime Time's intellectual property rights. Specifically, the CREATURE CANNON literally infringes the '642 Patent. The mere addition of an element, namely a fanciful head, to a product that infringes the '642 Patent, does not avoid infringement of the '642 Patent.

It is Prime Time's policy to require infringers to (i) immediately cease all infringement of its intellectual property rights and recall infringing products from retailers; and (ii) compensate Prime Time for past infringement.

Based on the foregoing and Prime Time's familiarity with and personal respect for your President, Mr. Jack Friedman, and your company, Prime Time would like to immediately discuss a prompt, economical and final resolution of this conflict. Please inform us of your willingness to discuss the matter as soon as possible, but in no event later than February 28, 2008.

Jakks Pacific, Inc.

-3-

February 21, 2008

Nothing in this letter is intended to waive our client's rights, all of which are expressly reserved.

Very truly yours,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Neil Zipkin

NMZ/cab Attachments

cc: Francis Chia, Prime Time Toys, Ltd.

## **EXHIBIT B**

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

PRIME TIME TOYS, LTD.,	)
Plaintiff,	) 2008-CV-2909 (NRB/GWG)
v.	) ANSWER and COUNTERCLAIM
JAKKS PACIFIC, INC.,	) ECF CASE
	)
Defendant.	) )

#### **ANSWER and COUNTERCLAIM**

JAKKS PACIFIC, INC. ("JAKKS" or "Defendant") responds to the Complaint filed by Plaintiff Prime Time Toys, Ltd. ("PTT" or "Plaintiff") as follows:

#### THE PARTIES

- 1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and therefore denies them.
  - 2. Defendant admits the allegations of paragraph 2 of the Complaint.
- 3. The allegations contained in Paragraph 3 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 3 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.
- 4. The allegations contained in Paragraph 4 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 4 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.
  - 5. Defendant admits the allegations of paragraph 5 of the Complaint.
- 6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint, and therefore denies them.

- 7. Defendant admits the allegations of paragraph 7 of the Complaint.
- 8. Defendant admits that it participated in the 2008 Toy Fair, and that it displayed its Creature Cannon products there; Defendant denies the remaining allegations of paragraph 8 of the Complaint.
  - 9. Defendant admits the allegations of paragraph 9 of the Complaint.
  - 10. Defendant admits the allegations of paragraph 10 of the Complaint.
- 11. Defendant admits that it is subject to this Court's jurisdiction. Defendant avers that the remaining allegations contained in Paragraph 11 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 11 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.
- 12. The allegations contained in Paragraph 12 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 12 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.
- 13. JAKKS denies all allegations of patent infringement alleged in Paragraph 13 of the Complaint. The remaining allegations contained in Paragraph 13 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the remaining allegations in Paragraph 13 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

#### **BACKGROUND**

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint, and therefore denies them.

- 15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint, and therefore denies them.
- 16. Defendant admits that United States patent no. 7,281,642 B2 ("the '642 Patent") issued on October 16, 2007 and that a copy of such patent is annexed as Exhibit D of the Complaint. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 16 of the Complaint, and therefore denies them.
- 17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint, and therefore denies them.
- 18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint, and therefore denies them.
- 19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint, and therefore denies them.
- 20. Defendant admits that it has sold and shipped products under the Creature Cannon mark to retailers; Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 20 of the Complaint, and therefore denies them.
  - 21. Defendant denies the allegations of paragraph 21 of the Complaint.
  - 22. Defendant denies the allegations of paragraph 22 of the Complaint.
- 23. Defendant admits that a true and correct copy of a letter sent by PTT's counsel to JAKKS is annexed as Exhibit F to the Complaint and that the letter speaks for itself. JAKKS denies the remaining allegations contained in paragraph 23 of the Complaint.
  - 24. Defendant denies the allegations of paragraph 24 of the Complaint.

# COUNT I PATENT INFRINGEMENT

25. Defendant repeats and realleges its answers to the allegations appearing in paragraphs 1-24 as if fully set forth herein.

3

- 26. Defendant denies the allegations of paragraph 26 of the Complaint.
- 27. Defendant denies the allegations of paragraph 27 of the Complaint.
- 28. Defendant denies the allegations of paragraph 28 of the Complaint.
- 29. Defendant denies the allegations of paragraph 29 of the Complaint.
- 30. Defendant admits that it received a letter dated February 21, 2008 sent by PTT's counsel to JAKKS annexed as Exhibit F to the Complaint and that the letter speaks for itself. JAKKS denies the remaining allegations contained in paragraph 30 of the Complaint.
  - 31. Defendant denies the allegations of paragraph 31 of the Complaint.
  - 32. Defendant denies the allegations of paragraph 32 of the Complaint.
  - 33. Defendant denies the allegations of paragraph 33 of the Complaint.

#### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

34. The complaint, in whole or in part, fails to state a claim upon which relief may be granted.

#### SECOND AFFIRMATIVE DEFENSE

35. Upon information and belief, the plaintiff has failed to provide the proper notice of the patent involved in this litigation on products sold by or under the authority of the patent owner as required by 35 U.S.C. § 287 and, therefore, the claims for damages for patent infringement prior to actual notice of the patents are barred.

#### THIRD AFFIRMATIVE DEFENSE

36. The '642 patent asserted against Defendant is, upon information and belief, invalid for failure to comply with one or more of the provisions entitled Title 35 U.S.C. §§ 101, 102, 103 and 112.

#### FOURTH AFFIRMATIVE DEFENSE

37. Upon information and belief, with respect to any Creature Cannon product sold by the Defendant which may have included any alleged patented configurations assigned to plaintiff, such configurations were known to the trade more than 1 year prior to the filing of the applications which matured into the '642 patent.

#### FIFTH AFFIRMATIVE DEFENSE

38. Plaintiff is precluded from recovering any relief sought in the complaint by reason of its own unclean hands.

#### SIXTH AFFIRMATIVE DEFENSE

39. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation and/or filing periods.

#### SEVENTH AFFIRMATIVE DEFENSE

40. At all times relevant to this suit, Defendant has acted in good faith and had reasonable grounds for believing its actions were not in violation of law.

#### EIGHTH AFFIRMATIVE DEFENSE

41. Plaintiff's claims are barred to the extent it has committed fraud upon the Patent and Trademark Office.

#### NINTH AFFIRMATIVE DEFENSE

42. Plaintiff's claims are barred by waiver, equitable estoppel, and file wrapper estoppel.

#### TENTH AFFIRMATIVE DEFENSE

43. Plaintiff's claims are frivolous, unreasonable, and groundless; accordingly defendants should recover all costs and attorneys' fees incurred herein.

#### ELEVENTH AFFIRMATIVE DEFENSE

44. Plaintiff's claims are barred by plaintiff's knowledge, consent and acquiescence, license, and laches.

#### TWELTH AFFIRMATIVE DEFENSE

45. Plaintiff is barred from recovery because there are no valid and enforceable claims of the `642 Patent.

#### THIRTEENTH AFFIRMATIVE DEFENSE

46. Plaintiff is barred from recovery because of its patent misuse of the `642 Patent.

#### FOURTEENTH AFFIRMATIVE DEFENSE

47. Defendant alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory terms used in the Complaint. Accordingly, Defendant expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

#### FIFTEENTH AFFIRMATIVE DEFENSE

48. Defendant has not infringed, induced infringement of, or contributed to the infringement of any valid claim of the '642 Patent.

#### COUNTERCLAIM

JAKKS Pacific, Inc. (hereinafter "JAKKS" or "Counterclaimant") by and through its undersigned attorneys, hereby alleges and counterclaims as follows:

#### JURISDICTION AND VENUE

- 1. This Court has subject matter jurisdiction over the Counterclaim, which seeks a declaratory judgment that its Creature Cannon product does not infringe United States Patent No. 7,281,642 B2 (hereinafter "the '642 Patent") and that the '642 Patent is invalid pursuant to 28 U.S.C.§§ 1331, 1332, 1338(a), and 2201 et seq.
- 2. There is a justiciable and actual case and controversy between the parties with respect to the non-infringement and invalidity of the `642 Patent.
  - 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

4. PTT commenced the within action in which its Complaint expressly charges JAKKS with patent infringement. PTT thus has submitted itself to the jurisdiction and venue of this Court.

#### **BACKGROUND**

- 5. On or about February 21, 2008, JAKKS received a communication from counsel for PTT alleging that JAKKS' Creature Cannon product infringed the '642 Patent. Exh. F to the Complaint ("Exh. F at \_\_\_\_").
- 6. On or about February 27, 2008, counsel for JAKKS responded by pointing out that the Creature Cannon did not infringe any of the independent claims of the '642 Patent. See Exh. 1 hereto.
- 7. On or about March 25, 2008, counsel for PTT responded to that letter by announcing that it had filed suit for patent infringement. See Exh. 2 hereto.
- 8. On or about April 8, 2008, counsel for JAKKS responded to the March 25 letter by again pointing out based on the limitations of the claims, the file wrapper history and inspection of the Creature Cannon product, the Creature Cannon did not infringe the '642 Patent. See Exh. 3 hereto.
  - 9. PTT never responded to the April 8, 2008 letter from counsel for JAKKS.
- 10. Upon information and belief, at all times herein, PTT was aware or should have been aware that its claim that the Creature Cannon infringed the '642 patent should be was and is without merit.

### <u>COUNT I</u> (<u>Declaratory Judgment of Non-Infringement of the '642 Patent</u>

11. JAKKS repeats and realleges the allegations appearing in paragraphs 1-10 of the Counterclaim as if fully set forth herein.

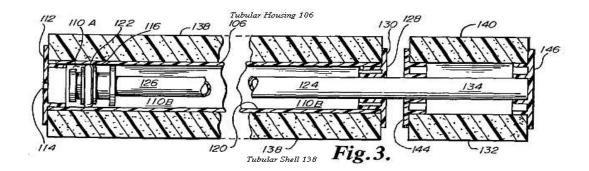
7

- 12. The '642 Patent is composed of three independent claims (1, 5 and 13) none of which is infringed by the Creature Cannon products.
- 13. Independent Claim 1 of the '642 Patent 1 requires that the toy be "encased in a soft material along its *entire* length when in the contracted configuration" Exh. F at col. 3, lines 7-8.
- 14. The soft shell of the Creature Cannon products does not cover the entire toy since the tubular housing of the Creature Cannon product juts out beyond the outer length of the outer foam. See Exh. 4 hereto.





- 15. Because the soft shell of the Creature Cannon products does not cover the entire toy since the tubular housing of the Creature Cannon product juts out beyond the outer length of the outer foam, the Creature Cannon does not infringe independent claim 1 of the '642 patent, nor any of the claims dependent upon claim 1.
- 16. Independent claim 5 requires an "outer shell covering *the entire tubular housing* from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted." Exh. F at col. 3, ll. 32-36 (illustrated in figure 3 below).



17. The tubular housing of the Creature Cannon extends beyond the soft outer shell covering.



- 18. The tubular housing of the Creature Cannon does not have a uniform diameter as it is threaded at both ends.
- 19. Because the tubular housing of the Creature Cannon is threaded, it does not have a uniform cross-section along its entire length.
- 20. During the prosecution of the '642 Patent, PTT unsuccessfully attempted to broaden the coverage of the '642 by claiming the toy has "substantially uniform cross-section along its entire length when fully contracted." See Exh. 5 hereto, the File Wrapper of the '642 Patent.
- 21. Instead PTT limited its claim to "said tubular housing having a *uniform cross-section*" along its entire length." Exh 5, Supplemental Amendment filed on July 10, 2007 at 5.
- 22. The doctrine of file wrapper estoppel estops PTT from asserting that the Creature Cannon tubular housing infringes according to the "doctrine of equivalents."

- 23. Therefore, the Creature Cannon does not infringe independent claim 5 of the '642 Patent, nor any of the claims dependent on it.
- 24. Independent Claim 13 requires that an outer shell cover a tubular housing from "adjacent the first end to adjacent the second end of the tubular housing". Exh. F at col. 4, lines 29-31. However, the term "adjacent" is not supported by the specification or drawings of the '642 patent or even the original claims as filed—It was added by amendment on July 10, 2007. Exh. 5, Supplemental Amendment filed on July 10, 2007 at 5.
- 25. The '642 patent discloses a toy whose soft outer shell covers the *entire* tubular housing. See, e.g. col. 2, lines 49-53 stating that the "tubular shell 138 . . . *surrounds tubular housing 106*".
  - 26. Surrounds means "to enclose or encircle entirely."
- 27. Claim13 is invalid under 35 USC § 112 (first paragraph) because (1) the 642 patent only discloses a water gun toy with a soft outer shell covering the entire tubular housing; (2) the term "adjacent" is not supported in the specification or drawings of the 642 patent; and, (3) the term adjacent was not part of the original application as filed.
  - 28. Therefore, Claim 13 and all its dependent claims are invalid.
- 29. In light of the foregoing, the Creature Cannon does not infringe independent Claim 13 nor any of the claims dependent on claim 13.
- 30. Because the Creature Cannon does not infringe any of the independent claims of the '642 patent nor any of the claims that are dependent on such independent claims, JAKKS is entitled to a declaratory judgment that its Creature Cannon does not infringe the '642 patent.
- 31. Because PTT is or was aware that the Creature Cannon does not infringe the '642 but nonetheless filed the instant complaint and declined to withdraw it after additional notice of the deficiencies of its claim of infringement, JAKKS is entitled to a finding that this is an exceptional case under 35 U.S.C. § 285.

### <u>COUNT II</u> (Declaratory Judgment of Invalidity of the '642 Patent

- 32. JAKKS repeats and realleges the allegations appearing in paragraphs 1-31 of the Counterclaim as if fully set forth herein.
- 33. Upon information and belief, the claims of the '642 Patent are invalid, void, and unenforceable for, *inter alia*, failure to meet the requirements of a patent and patent validity set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.
- 34. In light of the foregoing, JAKKS is entitled to a judgment that the '642 Patent is invalid.

WHEREFORE, Defendant JAKKS Pacific, Inc. requests judgment against the Plaintiff as follows:

- A. Judgment dismissing the Complaint with prejudice;
- B. Judgement in its favor on its Counterclaims declaring:
  - i. That the '642 patent is invalid and is not infringed;
  - ii. That this is an exceptional case under 35 U.S.C. § 285.
- C. Judgement awarding JAKKS interest as authorized by law for all payments made by JAKKS for its attorney's fees, disbursements and costs necessitated by the defense of this action; and
- D. Such further relief as the Court deems just and proper.

Dated: June 20, 2008 New York, NY

# FEDER, KASZOVITZ, ISAACSON, WEBER, SKALA, BASS & RHINE LLP

By: /s/ Larry Miller

Larry Miller (LM-8323)

Attorneys for Defendant
JAKKS Pacific, Inc.
750 Lexington Avenue

New York, New York 10022

Tel: 212- 888-8200 Fax: 212-752-4632

## EXHIBIT 1

# TOPE-MCKAY & ASSOCIATES

INTELLECTUAL PROPERTY PRACTITIONERS

23852 Pacific Coast Highway Suite 311 Malibu, CA 90265 mrisso@topemckay.com

February 27, 2008

Tel: 310.266.5663

Fax: 310.943.2736

Neil M. Zipkin Amster, Rothstein & Ebenstein, LLP 90 Park Avenue New York, N.Y. 10016

Sent via U.S. Postal and e-mail to <a href="mailto:nzipkin@arelaw.com">nzipkin@arelaw.com</a>

RE: Prime Time Toys, Inc.; Your file: 69281/93

Dear Mr. Zipkin,

My name is Marcus Risso and I am a patent attorney with Tope-McKay & Associates. Our office serves as intellectual property counsel for JAKKS Pacific, Inc. ("JAKKS"), located at 22619, P.C.H., Malibu, CA.

It was recently brought to our attention that you are alleging patent infringement with respect to your client's utility patent, U.S. Patent No. 7,281,642 ("the '642 patent") and JAKKS Creature Cannon product. As you can imagine, allegations of patent infringement are something that we take very seriously and investigate with the utmost diligence.

Upon a thorough review of the cited patent and the alleged infringing items, we believe it is highly unlikely that any court would ultimately find that the Creature Cannon is infringing the cited patent.

To determine whether a product infringes a U.S. patent, the court looks to the patent's claims. The claims are numbered and are located at the end of the patent. For each claim, there is a two-step inquiry. First, the court construes or interprets the claim. That is, the court resolves any disputes as to the meaning of the particular claim terminology. Second, the properly construed claim is compared to the accused product to determine whether there is literal infringement or infringement under doctrine equivalents, if applicable. *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1211-12, 48 U.S.P.Q.2d 1010, 1014-15 (Fed. Cir. 1998).

To determine literal infringement, the relevant inquiry is whether <u>all</u> the elements contained in the claim appear in the product under consideration. The product is said to

infringe literally when it has everything mentioned in the claim. Stiftung v. Renishaw PLC, 945 F.2d 1173, 1178, 20 U.S.P.Q.2d 1094, 1098 (Fed. Cir. 1991). On the other hand, a product that does not have each and every element recited in the claim should not be considered a literal infringement. Mas-Hamilton, 156 F.3d at 1211, 48 U.S.P.Q.2d at 1015.

As applied to the present case, there are three independent claims, Claims 1, 5, and 13. For clarity, each independent claim will be addressed in turn.

#### Claim 1 reads as follows:

"An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along its entire length when in the contracted configuration, the soft material having a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross-section along its entire length when in the contracted configuration" (emphasis added).

As noted in your letter dated February 21, 2008, the Creature Cannon includes a head at one end that operates as a nozzle to expel the water. Thus, the "toy" includes a head nozzle, which is most certainly NOT encased in a soft material. As such, the "entire" length of the "toy" is not encased in a soft material. Further, given the inclusion of the head nozzle, the "toy" does not have a uniform cross section along its "entire" length.

Assuming arguendo that the head nozzle is removed, the toy includes a tubular housing that extends beyond the encasement of the soft material. More specifically, the tubular housing protrudes well beyond the end of the soft material to extend the housing chamber and also provide threads upon which the head nozzle is screwed. Thus, assuming arguendo that the head nozzle is removed, the tubular housing is NOT encased in soft material along its "entire" length, nor does it have a uniform cross-section along its "entire" length. As such, Claim 1 is NOT literally infringed.

#### Claim 5 reads as follows:

"A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the entire tubular housing from the first end to the second end to provide

the toy with a cylinder shape, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted" (emphasis added).

As was the case above, the Creature Cannon does not include an outer shell that covers the "entire" tubular housing from the first end to the second end. Additionally, because the tubular housing is not covered entirely by the outer shell, the tubular housing also lacks a uniform cross-section along its "entire" length. Thus, once again, the Creature Cannon is NOT literally infringing Claim 5.

#### Claim 13 reads as follows:

"A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted" (emphasis added).

Finally, assuming arguendo that the head nozzle is removed, the Creature Cannon includes a tubular housing that extends well beyond the outer shell (i.e., the outer shell covers only a portion of the tubular housing). Thus, the Creature Cannon does NOT include the element of an "...outer shell covering the tubular housing from adjacent the first end to adjacent the second end..." Further, because the outer shell does not cover the tubular housing from adjacent the first end to adjacent the second end, the tubular housing does NOT have a uniform cross-section along its "entire" length. Therefore, the Creature Cannon is also NOT literally infringing Claim 13.

It is noted that the patentee is prevented from arguing a broad scope of equivalents because of amendments made during the prosecution of the present application. Wang Lab., Inc. v. Mitsubishi Elecs. Am., Inc., 103 F.3d 1571, 1578, 41 U.S.P.Q.2d 1263, 1269 (Fed. Cir.), cert. denied, 522 U.S. 818 (1997). The essence of prosecution history estoppel is that a patentee should not be able to obtain, through litigation, coverage of subject matter relinquished during prosecution. Ordinarily, prosecution history estoppel arises when an applicant affirmatively relinquishes subject matter (either through an amendment or argument) in the course of prosecution. Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1574, 41 U.S.P.Q.2d 1961, 1968 (Fed. Cir. 1997).

In reviewing the prosecution history of the '642 patent, it is noted that both amendments AND arguments were made that specifically limited the claims to having an outer shell that covers the entire tubular housing, and a tubular housing having a uniform crosssection along its entire length.

For example, I direct you to the Agenda for Examiner Interview, dated June 11, 2007. In the Agenda for Examiner Interview, the patentee suggested amending the claims to emphasize that the claimed toy has a uniform cross-section along its entire length when in a contracted configuration (in fact, the patentee later made such a narrowing amendment). The patentee further argued that "None of the applied references teach this feature. [The] Sands [patent], for example, discloses a toy water gun having numerous protrusions along its length, particularly at the longitudinal end portions. The uniform cross-section allows the inventive toy to take on the appearance of a 'swimming noodle'." In other words, the patentee argued that a point of novelty resides in the fact that there are no protrusions along the length of the toy and therefore it has a uniform cross-section along its entire length.

Upon a review of the Creature Cannon, it is readily apparent that it includes a protrusion along its length, particularly at the longitudinal end portion. The protrusion is in the form of head portion that operates as a nozzle. While the patentee argued that the '642 patent was different from the prior art in that it took on the appearance of a 'swimming noodle' and had a uniform cross-section along its entire length, you are now claiming that the addition of the head nozzle is immaterial with respect to infringement. This is NOT true. Applying prosecution history estoppel, the courts are unlikely to broaden the scope of this element.

Further, in the Agenda for Examiner Interview, the patentee suggested amending the claims to recite that the soft material that encases the toy extends across the entire length of the toy (in fact, the patentee later made such a narrowing amendment). The patentee continued by arguing that the "soft material provides both buoyancy and protection from injury. None of the applied references teach this feature. [The] Henderson [patent], for example, teaches the use of a foam rubber handle 28, but the foam rubber is only disposed at one end of the toy. Thus, the whipping action of the Henderson toy is particularly dangerous, since the end to be whipped is not encased in a soft material." In other words, the patentee argued that a point of novelty resides in the fact that the foam covers both ends of the toy.

Upon a review of the Creature Cannon, it is also readily apparent both ends of the toy are NOT encased in a soft material. The head nozzle (or end of the toy) is not covered in the outer shell, as required by the claims and corresponding prosecution arguments. While the patentee argued that the '642 patent was different than the prior art because it was covered in foam at both ends, you are now claiming that the addition of the head nozzle is immaterial with respect to infringement. Once again, this is NOT true. Applying the same principles of estoppel, the courts are again unlikely to broaden the scope of this element as well. In any event, assuming arguendo that the head nozzle is removed, the tubular housing extends beyond the outer shell.

Filed 08/20/2008

I would like to emphasize that we respect your client's intellectual property rights. However, in this case, we feel strongly that your claims of patent infringement are misguided at best. I would recommend that you have a heart-felt conversation with your client and provide them with the very real facts in this case. Mainly, that the Creature Cannon is NOT literally infringing the '642 patent and that due to the narrowing amendments and related arguments that were made during the prosecution of the patent, the courts will NOT interpret the claims broadly.

With that understanding, I think your client will agree that the Creature Cannon does not infringe upon the '642 patent.

Should you have any questions or comments, please feel free to call me at the number listed above.

Best regards,

Marcus Risso

mrisso@topemckay.com

(310) 266-5663

EXHIBIT 2

## AMSTER ROTHSTEIN & EBENSTEIN LLP

Intellectual Property Law

90 Park Avenue New York NY 10016

Main 212 336 8000 Fax 212 336 8001 Web www.arelaw.com

March 25, 2008

Via Federal Express

Marcus Risso Tope-McKay & Associates 23852 Pacific Coast Highway Suite 311 Malibu, CA 90265

Re:

Hoseen
Moreon Annier
Jeue Rodminn (1964 - 2002)
Daniel Ebenuerin
Philip H. Gonfried
Michael J. Berger
Nul M. Zipkin
Authony F. Lo Ciceró
Kenneth P. George
Albesham Kadan, Ph.D.
Ira E. Sillin
Chester Rodminin
Craig J. Amold

Konneth M. Bernstein Joseph M. Casino Michael V. Solometa Chades R. Macedo Sonor Caused

John S. Economico Maston P. Metchki Alas D. Miller, Ph.D.

Another Panick Bobed\* Holly Pekowsky Michael P. Kenney Max Vern Beian A. Comack Richard S. Mandaro Marc I. James

Richard S. Mandare Marc J. Jacon David Mitmick Charles W. Rath David A. Boag Manhieu Haurig Jung S. Hahm Reike Knji

Nongean McCollery

Benjamin M. Halpern\*

Matthew A. Fox

Michael J. Kades

Howard Wisenfeld

Survey B. Gauther

Smart Shaple)

Peter R. Vogel

Been M. Pinkux\*

Rebecta R. Essenberg

Neil M. Zipkin Direct 212 336 8120 E-mail nzipkin@arelaw.com

Jakks Pacific, Inc., Infringement of Prime Time's '642 Patent by

CREATURE CANNON Our File: 69281/93

Dear Mr. Risso:

We are in receipt of your letter of February 27, 2008.

As an initial matter we note that Prime Time, in order to effectively protect its rights and interests, has filed a patent infringement action against Jakks Pacific in the Southern District of New York. We have enclosed a courtesy copy of the complaint.

Although you refer to the two-step inquiry for claim construction in your letter, you ignore the first step and address only the second step. That is, you have made no attempt to interpret the claim and merely compare the unconstrued claim to the CREATURE CANNON toy. The result is an erroneous infringement analysis.

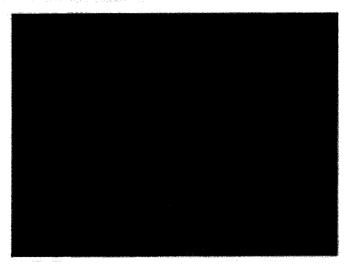
With regard to the all elements rule, while your characterization of the Stiftung v. Renishaw PLC, 945 F.2d 1173 (Fed. Cir. 1991) generally seems accurate, you leave out a key holding directly relevant to the present matter. That is, claims which use the term "comprising" read on devices which contain additional elements. Id. at 1178 ("It is fundamental that one cannot avoid infringement merely by adding elements if each element recited in the claims is found in the accused device." Quoting A.B. Dick Co. v. Burroughs Corp., 713 F.2d 700, 703 (Fed. Cir. 1983), cert. denied, 464 U.S. 1042 (1984)).

March 25, 2008 -2-Marcus Risso

You provide no interpretation of "tubular housing", the claim term upon which your analysis is based. The claims and specification of the '642 Patent make it perfectly clear that the claimed "tubular housing" is the "rigid" portion of the squirting toy "that encloses a hollow cylindrical chamber 110" (Col. 2, lines 30-31; Col. 3, lines 21-22 and Col. 4, lines 17-18). In addition, Claims 5-13 include the requirement: "said tubular housing having a uniform cross-section along its entire length" (Col. 3, lines 35-36 and Col. 4, lines 36-37). Thus, the term "tubular housing" is clearly defined in the claims and specification of the '642 Patent as an enclosure of uniform cross-section along its entire length, defining a hollow cylindrical chamber for receiving water.

Based on the proper construction of the term "tubular housing" found in the '642 Patent, the tubular housing of the CREATURE CANNON toy is that part of the CREATURE CANNON toy enclosing a cylindrical chamber and having a uniform crosssection. The "threads" and "head nozzle" of the CREATURE CANNON toy are distinct from the "tubular housing" of the CREATURE CANNON toy. The threads and head nozzle, like the creature head itself, are merely "added elements" and do not avoid infringement of the '642 Patent by the CREATURE CANNON toy. Stiftung v. Renishaw PLC. 945 F.2d at 1178.

When properly construed, the tubular housing of the CREATURE CANNON toy is covered with foam from its handle end to its distal end, as seen in this photograph of the CREATURE CANNON toy distal end:



Thus, the tubular housing of the CREATURE CANNON toy is covered "from the first end to the second end" by an outer shell as claimed in Claim 5. Similarly, the tubular

Marcus Risso

-3-

March 25, 2008

housing of the CREATURE CANNON toy is covered "from adjacent' the first end to adjacent the second end" with an outer shell as claimed in Claim 13.

The "threads", "head nozzle" and "head" are merely 'add-on' elements that do not avoid infringement of the '642 Patent by the CREATURE CANNON toy. See, e.g., Stiftung v. Renishaw, 945 F.2d at 1178. Based on your February 27, 2008 letter, we can anticipate that you will argue that the threads, head nozzle and creature head of the CREATURE CANNON toy are "protrusions" and some estoppel applies. Prior to making some argument along these lines, please first consider: (1) There is literal infringement in this case; and (2) the "protrusions" were contrasted with the uniform cross-section of the "toy" in Claim 1, while Claims 5-13 only require that the tubular housing have a "uniform cross-section". Further, there is no disclaimer of claim scope: "[t]he presence of an undesirable prior art feature in addition to the elements recited in the claim, even when the undesirability of that feature formed the basis of an amendment and argument overcoming a rejection during prosecution, does not limit the claim unless there is a clear and unmistakable disclaimer of claim scope", Free Motion Fitness, Inc. v. Cybex Int'l, 423 F.3d 1343, 1353 (Fed. Cir. 2005).

In light of the literal infringement of the '642 Patent by the CREATURE CANNON toy, please refer to Prime Time's demands in our earlier letter and provide Jakks Pacific's plan for complying with these demands. To the extent that Jakks Pacific does not plan to abide by these demands, Prime Time requests that your firm will be authorized to accept service of the summons and complaint on behalf of Jakks Pacific. If you inform us of such authorization then we shall send you the appropriate documents.

Nothing in this letter is intended to waive any of our client's rights or remedies, all of which are expressly reserved.

Very truly yours,

AMSTER ROPHSTEIN & EBENSTEIN LLP

NMZ/

cc:

Target Corporation Prime Time Toys, Ltd.

The term "adjacent" has been interpreted by the Federal Circuit as meaning "relatively near" or "not distant". See, e.g., Free Motion Fitness, Inc. v. Cyber Int'l, 423 F.3d 1343, 1349 (Fed. Cir. 2005) ("One definition is "not distant" and the other is "relatively near and having nothing of the same kind intervening.") Under either interpretation, it is clear that the CREATURE CANNON literally satisfies this claim element even assuming, arguendo, that the "head nozzle" and/or just the "threads" are part of the tubular housing.

EXHIBIT 3

### TOPE-MCKAY & ASSOCIATES

INTELLECTUAL PROPERTY PRACTITIONERS

23852 Pacific Coast Highway Suite 311 Malibu, CA 90265 mrisso@topemckay.com Tel: 310.266.5663 Fax: 310.943.2736

April 4, 2008

Neil M. Zipkin Amster, Rothstein & Ebenstein, LLP 90 Park Avenue New York, N.Y. 10016

Sent via U.S. Postal and e-mail to nzipkin@arelaw.com

RE: Prime Time Toys, Inc.; Your file: 69281/93

Dear Mr. Zipkin,

We are in receipt of your letter dated March 25, 2008 regarding your client's ("Prime Time") utility patent, U.S. Patent No. 7,281,642 ("the '642 patent"), and JAKKS Creature Cannon product.

As a preliminary matter, please note that we are NOT authorized to accept service and will accept no such documents or service.

With respect to your comment that the analysis was erroneous, I respectfully disagree as the letter was focused on several of the more salient points as opposed to providing you the benefit of a formal non-infringement opinion. Having said that, in your letter of March 25, 2008, you expanded upon the two-step inquiring by attempting to provide a claim interpretation with respect to the term, "tubular housing." I have reviewed your analysis and disagree with your interpretation of the term "tubular housing," as you have misinterpreted the case law upon which you base your interpretation.

You have cited to *Free Motion Fitness, Inc. v. Cybex Int'l*, to support your claim that there is no disclaimer of the claim scope. The citation reads, "[t]he presence of an undesirable prior art feature in addition to the elements recited in the claim, even when the undesirability of that feature formed the basis of an amendment and argument overcoming a rejection during prosecution, does not limit the claim unless there is a clear and unmistakable disclaimer of claim scope. Here, there is no such disclaimer" *Free Motion Fitness, Inc. v. Cybex Int'l*, 423 F. 3d 1343, 1353 (Fed. Cir. 2005) (emphasis added). While I agree in principle to the cited law, I disagree with your application and analysis.

In *Free Motion*, the patentee "overcame a rejection to the prior art Fitzpatrick patent by amending the claims to include a 'rotating about an axis substantially parallel to the second axis' limitation and made the following argument in connection with the amendment:

The undesirable forces created by the transverse orientation of the pulley 38 disclosed by Fitzpatrick is [sic] in direct contrast with the claimed invention where the axes of the respective pulleys are is [sic] substantially parallel to the axes of rotation of the extension arms. The claimed assembly provides for virtually no variation in cable tension when the extension arms are selectively rotated." See id.

For further clarity, the patents at issue in *Free Motion* describe the arms of a weight-lifting machine that are attached to the pulley assembly of the machine such the axes of their respective pulleys are substantially parallel to the axes of rotation of the extension arms. Thus, each arm pivots in a single plane that it shares with a pulley. Alternatively, the cited prior art (Fitzpatrick) discloses an exercise device wherein the axes of rotation of the arms are transverse to the axes of rotation of the pulleys. Thus, in Fitzpatrick, each arm pivots in a plane that is in a transverse relationship (cross-direction) to the axis of rotation of the pulley. In prosecuting the patents, the patent holder appropriately pointed out that the cited prior art did not include each element of the claimed invention, which is common practice.

However, unlike the patented devices, the arms of Defendant-Appellees' (in *Free Motion*) devices were attached to the resistance assembly of the machine such that they pivoted in two different planes. In other words, Defendant-Appellees' devices included arms that pivoted in a plane that it shared with a pulley (as was patented by Free Motion), in addition to pivoting in a plane that is transverse to the axis of rotation of the pulley.

The Court in *Free Motion* held that a patent holder is not estopped from asserting infringement by a device that—although including extension arms with axes of rotation substantially parallel to the pulleys—ALSO had the undesirable features of the prior art Fitzpatrick patent.

In other words, the Court in *Free Motion* held that although a patent holder may argue that a particular prior art feature is undesirable, as long as the infringing device includes the claimed elements, the patent holder is not stopped from asserting infringement even though the infringing device may ALSO include the undesirable feature.

Thus, in *Free Motion*, there was no disclaimer of the scope of the claims because the patent holder was not defining the limitations of the claims but rather contrasting distinct and claimed structural items between the cited prior art and the patent at issue. In other words, the patent holder did not further describe or discuss the claim limitations outside of what was already in the scope of the claims (as amended).

Page 27 of 40

While seemingly similar to the present issue, this is not the case. In the present case, Prime Time made a clear and unmistakable disclaimer of the claim scope during prosecution of the '642 patent. More specifically, in reviewing the prosecution history of the '642 patent, it is noted that both amendments AND arguments were made that specifically limited the claims to having an outer shell that covers the entire tubular housing such that the ends are encased in a soft material. Other amendments and arguments were made that were directed to the entire tubular housing having a uniform cross-section such that the end product takes on the appearance of a "swimming noodle," which again supports Prime Time's argument that the entire toy is encased in a soft material.

For example, I direct you to the Agenda for Examiner Interview, dated June 11, 2007. In the Agenda for Examiner Interview, Prime Time suggested "amending the claims to emphasize that the claimed toy has a uniform cross-section along its entire length when in a contracted configuration" (in fact, Prime Time later made such a narrowing amendment). Prime Time further argued that "None of the applied references teach this feature. [The] Sands [patent], for example, discloses a toy water gun having numerous protrusions along its length, particularly at the longitudinal end portions. The uniform cross-section allows the inventive toy to take on the appearance of a 'swimming noodle'."

In the same Agenda for Examiner Interview, Prime Time further suggested "amending the claims to recite that the soft material that encases the toy extends across the entire toy" (in fact, Prime Time later made such a narrowing amendment). Prime Time contrasted the invention to the prior art (i.e., Henderson) where only one end of the toy was encased in the soft material.

In other words, Prime Time argued that a point of novelty resides in the fact that there are no protrusions along the length of the toy and therefore it has a uniform crosssection along its entire length, and further that the entire length of the toy is encased by the soft material so that no ends exist that are not encased in the soft material. To be contrasted with Free Motion, the arguments made above are a clear and unmistakable disclaimer of the claim scope. In other words, during prosecution of the '642 patent, Prime Time defined the limitations of the '642 patent in absolute terms (i.e., "entire") and, therefore, there is a clear disclaimer in the scope of the claims. Thus, as a general statement, any toy that has a length that is not entirely encased by the soft material is outside of the claimed scope of the '642 patent and would not constitute patent infringement.

As noted before, to determine whether a product infringes a U.S. patent, the court looks to the patent's claims. The claims are numbered and are located at the end of the patent. For each claim, there is a two-step inquiry. First, the court construes or interprets the claim. That is, the court resolves any disputes as to the meaning of the particular claim terminology. Second, the properly construed claim is compared to the accused product to determine whether there is literal infringement or infringement under doctrine equivalents, if applicable. Mas-Hamilton Group v. LaGard, Inc., 156 F.3d 1206, 1211-12, 48 U.S.P.Q.2d 1010, 1014-15 (Fed. Cir. 1998).

This brings us to the issue of claim interpretation. As noted in my letter of February 27, 2008, a distinction between the Creature Cannon and the '642 patent can be found in the fact that the outer foam material does NOT cover the entire length of the "tubular housing." You have appropriately stated that that the claimed "tubular housing" is the "rigid" portion of the squirting toy "that encloses a hollow cylinder chamber 110" (Col. 2, lines 30-31). The specification continues by stating that "the forward end 112 of the tubular housing is closed except for a small hole 114" (Col. 2, lines 31-33), while the "[slide] bushing 128 supports shaft 124 at the rear end 130 of the tubular housing 106..." (Col. 2, lines 39-40). In other words and as clearly defined by the specification, the "tubular housing" is the rigid portion of the squirting toy that encloses a hollow cylinder chamber and extends from the forward end (which is closed except for a small hole) to a rear end. While it is true that the tubular housing in the '642 patent has a uniform crosssection along its entire length, this is an additional narrowing limitation to the interpretation set forth above and does not form the basic definition of the component.

You have erroneously analyzed the threaded portions of the Creature Cannon to somehow not be part of the tubular housing. As clearly evident in the picture of the Creature Cannon (as provided in your letter of March 25, 2008), the threaded portions of the Creature Cannon form the forward end of the tubular housing. Also as noted in the picture, the forward end can be closed except for a small hole using the attached nozzle. Therefore, given the proper interpretation of the term "tubular housing," the threaded portions of the Creature Cannon are an integral part of the "tubular housing" as they are required to comply with the definition of a rigid portion of the squirting toy that encloses a hollow cylinder chamber and extends from the forward end (which is delimited as being closed except for a small hole) to a rear end.

In addressing the first step and as noted above, it is clear that the "tubular housing" is the rigid portion of the squirting toy that encloses a hollow cylinder chamber and extends from the forward end (which is closed except for a small hole) to a rear end. Given the proper interpretation of the term "tubular housing," it is highly unlikely that any court would ultimately find that the Creature Cannon is infringing the cited patent.

Another claim interpretation resides with the term "adjacent." In this case, the term "adjacent" cannot be properly characterized by a dictionary alone but instead by intrinsic evidence as prosecution history estoppel applies. Interpreting the term must ensure that any reliance on dictionaries accords with the intrinsic evidence: the claims themselves, the specification, and the prosecution history. Phillips v. AWH Corp., 415 F.3d 1303, 1314 (Fed.Cir.2005). Under Phillips, the rule that "a court will give a claim term the full range of its ordinary meaning," Rexnord Corp. v. Laitram Corp., 274 F.3d 1336, 1342 (Fed.Cir.2001), does not mean that the term will presumptively receive its broadest dictionary definition or the aggregate of multiple dictionary definitions, *Phillips*, 415 F.3d at 1320-1322. Rather, in those circumstances where reference to dictionaries is appropriate, the task is to scrutinize the intrinsic evidence in order to determine the most appropriate definition. Id. at 1322-23, 1324.

The dictionaries provide several possible definitions, including those proffered by you in your letter of March 25, 2008. However, to be contrasted with Free Motion where there was no intrinsic evidence, in this case, the prosecution history suggests the term

"adjacent" means "immediately adjoining without intervening space." WordNet ® 3.0, © 2006 by Princeton University, taken from http://www.dictionary.com on April 3, 2008. This definition is supported by Prime Time's arguments that the toy and corresponding tubular housing are covered "entirely" by the soft material (i.e., outer shell). This definition is also supported by Prime Time's comparisons to Henderson, insinuating that no ends exist that are not encased in the outer shell. For the tubular housing to be covered entirely by the outer shell such that no ends exists that are not encased by the outer shell, there must be no exposed external surface of the tubular housing. Thus, the outer shell covers the tubular housing such that no intervening space exists between a first end of the tubular housing and the outer shell. Or at the other end, the outer shell covers the tubular housing such that no intervening space exists between a second end of the tubular housing and the outer shell. In other words, the outer shell covers the tubular housing from adjacent the first end to adjacent the second end. Therefore, based on the intrinsic evidence in this case, the term "adjacent" can be properly defined as immediately adjoining without intervening space.

To determine literal infringement, the relevant inquiry is whether *all* the elements contained in the claim appear in the product under consideration. The product is said to infringe literally when it has everything mentioned in the claim. Stiftung v. Renishaw PLC, 945 F.2d 1173, 1178, 20 U.S.P.Q.2d 1094, 1098 (Fed. Cir. 1991). On the other hand, a product that does not have each and every element recited in the claim should not be considered a literal infringement. Mas-Hamilton, 156 F.3d at 1211, 48 U.S.P.Q.2d at 1015.

When applied to the present case, there are three independent claims, Claims 1, 5, and 13. As a courtesy, each independent claim will again be addressed in turn.

#### Claim 1 reads as follows:

"An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along its entire length when in the contracted configuration, the soft material having a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross-section along its entire length when in the contracted configuration" (emphasis added).

As noted in your letter dated February 21, 2008, the Creature Cannon includes a head at one end that operates as a nozzle to expel the water. Thus, the "toy" includes a head nozzle, which is most certainly NOT encased in a soft material. As such, the "entire" length of the "toy" is not encased in a soft material. Further, given the inclusion of the head nozzle, the "toy" does not have a uniform cross section along its "entire" length.

Assuming arguendo that the head nozzle is removed, the toy includes a tubular housing with a threaded portion that extends beyond the encasement of the soft material. More specifically, the tubular housing protrudes well beyond the end of the soft material

to extend the hollow cylinder chamber and also provide threads (threaded portion) upon which the head nozzle is screwed. As noted above, the threaded portion is indeed part of the tubular housing. Thus, assuming arguendo that the head nozzle is removed, the tubular housing is NOT encased in soft material along its "entire" length, nor does it have a uniform cross-section along its "entire" length. In your letter of March 25, 2008, you did not directly address my comments with respect to Claim 1 and as such, I can only assume that you agree with the assertion that Claim 1 is NOT literally infringed.

#### Claim 5 reads as follows:

"A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the entire tubular housing from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted" (emphasis added).

As was the case above, the Creature Cannon does not include an outer shell that covers the "entire" tubular housing from the first end to the second end because the threaded portion of the Creature Cannon extends well beyond the outer shell. Additionally, because the tubular housing includes the threaded portion, the tubular housing also lacks a uniform cross-section along its "entire" length. Thus; once again, the Creature Cannon is NOT literally infringing Claim 5.

#### Claim 13 reads as follows:

"A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within

the chamber, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted" (emphasis added).

Finally, assuming arguendo that the head nozzle is removed, the Creature Cannon has a tubular housing with a threaded portion that extends well beyond the outer shell (e.g., the outer shell does not cover the threaded portion of the tubular housing).

You had raised an issue with respect to the term "adjacent" and stated that, citing Free Motion, the term "adjacent" has been interpreted by the Federal Circuit as meaning "relatively near" or "not distant." Erroneously using either interpretation, you argued that the Creature Cannon literally satisfies this claim element even assuming arguendo that the "head nozzle" or "threads" are part of the tubular housing.

Your definition of "adjacent" fails to account for the intrinsic evidence. Taking into consideration the prosecution history, the term "adjacent" can be properly defined as "immediately adjoining without intervening space." Using this definition, it is clear that the threaded portion of the tubular housing resides between the first end and the outer shell and as such, an intervening space exists between the first end and the outer shell. Thus, the Creature Cannon does NOT include the element of an "...outer shell covering the tubular housing from adjacent the first end to adjacent the second end..."

Further, it is also noted that through the threaded portion, the tubular housing does NOT have a uniform cross-section along its "entire" length. Therefore, for at least the reasons set forth above, the Creature Cannon is also NOT literally infringing Claim 13.

As a final note, you had also addressed the term "comprising," stating that "one cannot avoid infringement merely by adding elements if each element recited in the claims is found in the accused device." Quoting A.B. Dick Co. v. Burroughs Corp., 713 F. 2d 700, 703(Fed. Cir. 1983). While this statement of law is true, prosecution history estoppels applies in that the outer shell must cover the "entire" tubular housing (or toy). An extension of the tubular housing (or toy) beyond the outer shell is not merely an added element but a device that is outside of the scope of the '642 patent.

It is unfortunate that you have decided to pursue a costly litigation with little, if any, chance of success. In any event, I would ask that you again consult with your client and provide them with the very real facts in this case. Mainly, that the Creature Cannon is NOT literally infringing the '642 patent and that due to the narrowing amendments and related arguments that were made during the prosecution of the patent, the courts will NOT interpret the claims broadly.

Should you have any questions or comments, please feel free to call me at the number listed above.

Nothing in this letter is intended or shall be construed to constitute an express or implied waiver of any rights or remedies which our client may possess in connection with this matter, all of which are hereby expressly reserved.

Best regards,

Marcus Risso

MR.

mrisso@topemckay.com

(310) 266-5663

cc: Mike Dwyer, JAKKS Pacific, Inc.

**EXHIBIT 4** 











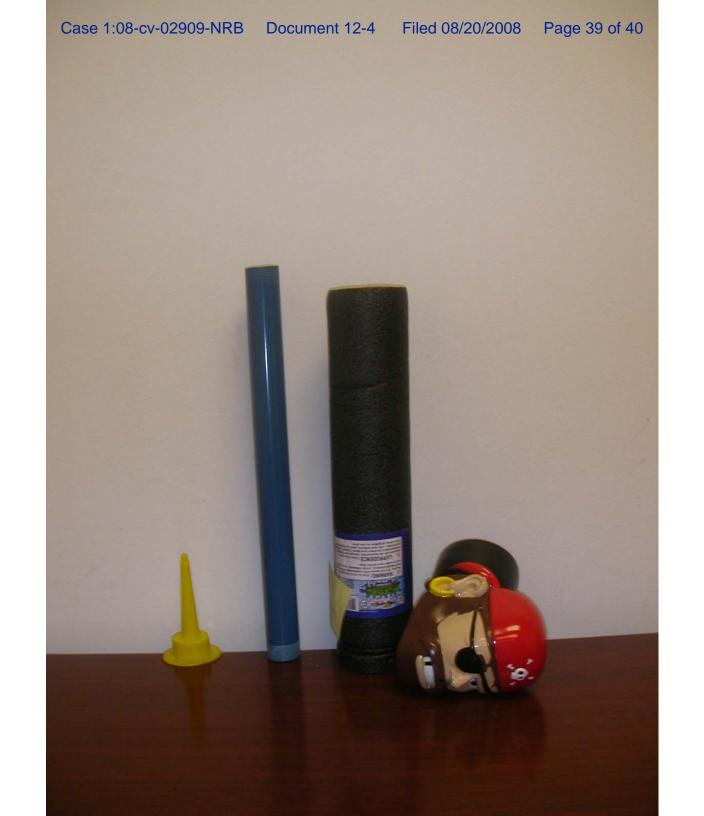




EXHIBIT 5
File Wrapper Part 1 of 7,281,642 B2

PTO/SB/05 (04-04) Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office. U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number PT-007 Attorney Docket No. UTILITY PATENT APPLICATION First Inventor AW ORLOWSKI TRANSMITTAL Title (Only for new nonprovisional applications under 37 CFR 1.53(b)) Express Mail Label No. 6 APPLICATION ELEMENTS Commissioner for Patents ADDRESS TO: P.O. Box 1450 See MPEP chapter 600 concerning utility patent application contents. Alexandria VA 22313-1450 1. Fee Transmittal Form (e.g., PTO/SB/17) CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix) (Submit an original and a duplicate for fee processing) 2. 🔀 Applicant claims small entity status. Nucleotide and/or Amino Acid Sequence Submission See 37 CFR 1.27. (if applicable, all necessary) 3. 🔀 Specification [Total Pages Computer Readable Form (CRF) (preferred arrangement set forth below) - Descriptive title of the invention Specification Sequence Listing on: Cross Reference to Related Applications - Statement Regarding Fed sponsored R & D CD-ROM or CD-R (2 copies); or - Reference to sequence listing, a table, or a computer program listing appendix - Background of the Invention Paper - Brief Summary of the Invention - Brief Description of the Drawings (if filed) Statements verifying identity of above copies - Detailed Description **ACCOMPANYING APPLICATION PARTS** - Claim(s) - Abstract of the Disclosure g Assignment Papers (cover sheet & document(s)) 4. Drawing(s) (35 U.S.C. 113) [Total Sheets Power of 10. 37 CFR 3.73(b) Statement (when there is an assignee) Attorney 5. Oath or Declaration [Total Sheets 11. English Translation Document (if applicable) a. Newly executed (original or copy) 12. **F** Information Disclosure Copies of IDS Statement (IDS)/PTO-1449 Citations b. Copy from a prior application (37 CFR 1.63(d)) 13. 📖 Preliminary Amendment (for continuation/divisional with Box 18 completed) 14. Return Receipt Postcard (MPEP 503) (Should be specifically itemized) **DELETION OF INVENTOR(S)** 15. Certified Copy of Priority Document(s) Signed statement attached deleting inventor(s) (if foreign priority is claimed) name in the prior application, see 37 CFR 16. Nonpublication Request under 35 U.S.C. 122 1.63(d)(2) and 1.33(b) (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent. Application Data Sheet. See 37 CFR 1.76 17. Other: \$385 FILING FEE 18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76: Continuation Divisional ☐ Continuation-in-part (CIP) of prior application No.: Prior application information: Examiner For CONTINUATION OR DIVISIONAL APPS only; The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts. 19. CORRESPONDENCE ADDRESS X 26250 Customer Number: Correspondence address below Name RANK MARIND MEREDITH NECK Address City MEREDITH State Zip Code Country Telephone USA Fax 603-279-0159 Name (Print/Type) Registration No. (Attorney/Agent) 37879 Signature Date

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete dapplication form to the OSPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (10-03)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL		Complete if Known			
		Application Number			
for FY 2004		Filing Date	HEREWITH		
Effective 10/01/2003. Patent fees are su		First Named Inventor	BOGUSLAW ORLOWSKI		
Applicant claims small entity status. See 37 CFR 1.27		Examiner Name			
- Prince of the order of the or		Art Unit			
TOTAL AMOUNT OF PAYMENT	L(\$) 385	Attorney Docket No.	PT-007		

Attorney Booker No.						
METHOD OF PAYMENT (check all that apply)	FEE CALCULATION (continued)					
Check Credit card Money Order None	3. A	DDITI	ONAL	_ FEE	S	
Deposit Account:	Large	Entity	Small	Entity	,	
Deposit	Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
Account Number	1051	130	2051	٠.,	Surcharge - late filing fee or oath	ree Paid
Deposit	1052	50	2052		Surcharge - late provisional filing fee or	
Account Name	4050				cover sheet	
The Director is authorized to: (check all that apply)	1053	130	1053		Non-English specification  For filing a request for ex parte reexamination	
Charge fee(s) indicated below Credit any overpayments	1804	2,520 920*	1812 1804		Requesting publication of SIR prior to	
Charge any additional fee(s) or any underpayment of fee(s)	1004	920	1004	920	Examiner action	
Charge fee(s) indicated below, except for the filing fee	1805	1,840*	1805	1,840*	Requesting publication of SIR after	
to the above-identified deposit account.	1251	110	2251	E E	Examiner action	
FEE CALCULATION	1252	420	2252	55 210	Extension for reply within first month  Extension for reply within second month	
1. BASIC FILING FEE	1252	950	2252		Extension for reply within third month	
Large Entity Small Entity  Fee Fee   Fee Fee   Fee Description   Fee Paid	1254		2254	740	Extension for reply within fourth month	
Code (\$) Code (\$)		2.010	2255		Extension for reply within fifth month	
1001 770 2001 385 Utility filing fee				,	' '	
1002 340 2002 170 Design filing fee	1401	330	2401		Notice of Appeal	
1003 530 2003 265 Plant filing fee	1402	330	2402		Filing a brief in support of an appeal	
1004 770 2004 385 Reissue filing fee	1403	290	2403		Request for oral hearing	
1005 160 2005 80 Provisional filing fee	1451		1451		Petition to institute a public use proceeding	
SUBTOTAL (1) (\$) 385	1452	110	2452		Petition to revive - unavoidable	
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE	1453		2453		Petition to revive - unintentional	
Fee from Extra Claims below Fee Paid	1501 1502	1,330 480	2501 2502		Utility issue fee (or reissue)	
Total Claims 77 -20** = PX = DEIOW	1502	640	2502		Design issue fee Plant issue fee	
Independent Claims 3 - 3** =  X =	1460	130	1460		Petitions to the Commissioner	
Multiple Dependent	1807	50	1807			
Large Entity   Small Entity	1806	180	1806		Processing fee under 37 CFR 1.17(q) Submission of Information Disclosure Stmt	
Fee Fee Fee Fee Description Code (\$) Code (\$)					Recording each patent assignment per	
1202 18 2202 9 Claims in excess of 20	8021	40	8021	40	property (times number of properties)	
1201 86 2201 43 Independent claims in excess of 3	1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1203 290 2203 145 Multiple dependent claim, if not paid	1810	770	2810	385	For each additional invention to be	
1204 86 2204 43 ** Reissue independent claims over original patent	1801	770	2801	385	examined (37 CFR 1.129(b))  Request for Continued Examination (RCE)	
1205 18 2205 9 ** Reissue claims in excess of 20 and over original patent	1802	900	1802	900	Request for expedited examination of a design application	
	Other	fee (sp	ecify)			
**or number previously paid, if greater; For Reissues, see above	*Redu	ced by	Basic F	iling Fe	ee Paid SUBTOTAL (3) (\$)	
or hamber previously palu, it greater, i or itelessues, see above					σσστοτια (σ) ((φ)	

SUBMITTED BY				(Complete	e (if applicable))
Name (Print/Type)	FRANK MARINO	Registration No. (Attorney/Agent)	37879	Telephon	603-279-0159
Signature	Freh-		-	Date	9-10-04

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, 3/A 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

### Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

on 9/10/04
Date

Signature

FRANK MARIND

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

-LETTERS PATENT APPL FOR "SQUIRTING TOY" INCLUDING SPECIFICATION (9 PAGES) AND DRAWINGS (4 SHEETS)

- DECLARATION OF AND POWER OF ATTORNEY BY INVENTOR BOQUELAW ORLOWSKI FOR ABOVE APPL.

- \$ 385 SMALL ENTITY FILING FEE FOR ABOVE APPL

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Docket PT-007 Date 08/01/04

Application for United States Letters Patent

For:

**Squirting Toy** 

Invented By:

Boguslaw Orlowski

### FIELD OF THE INVENTION:

The present invention is a water squirting apparatus for use at play. More specifically, it is a soft floating tubular piston type squirt gun for use such as in a swimming pool or swimming area by participants in or adjacent to the water.

### BACKGROUND AND OBJECTS OF THE INVENTION:

Squirt guns are well known in many forms in the prior art. Numerous squirt guns and squirting toys are made and have been made over the years for use by persons while swimming in or standing adjacent to a swimming pool, which are adapted to quickly take in water from the swimming pool for squirting. One such toy is called Water Stix<sup>TM</sup> and is sold by Hearthsong Inc. This toy, representative of many such squirting toys, is basically comprised of a housing having a nozzle at its squirting end. A piston, which includes a graspable handle, is adapted to slide within the housing so that, when the nozzle end of the housing is submerged in the pool and the piston is pulled backwards, water is drawn into the housing through the nozzle. And when the piston is subsequently forced forwardly, that water is forced from the housing, through the nozzle, towards a target, in a powerful stream.

Additionally, many squirt guns of the prior art are constructed in a manner that entraps air and thereby inadvertently enables those guns to partially float in water. The degree of such buoyancy is relative to the amount of water that has been taken into the gun and the longevity of such buoyancy is relative to the to the amount of air leakage from the housing.

There are also floating toy "swimming noodles" in the prior art, which are made of resilient floating closed-cell polymer foam. These toys are used to provide buoyancy to the user while swimming. Because these toys are often left floating in the pool when not in use, their softness eliminates the safety threat that they would otherwise pose.

It is therefore an object of the present invention to provide an improved squirting toy that floats fully atop the surface of the water, whether filled with or empty of water.

It is a further object to provide a soft squirting toy that is safer that squirting toys of the prior art.

It is a further object to provide a squirting toy that is both buoyant and soft.

It is a further object to provide such a squirting toy that has a similar appearance to a "swimming noodle".

Further objects and advantages of the invention will be apparent upon a review of the following description and drawings of the invention, including the preferred embodiment thereof.

### SUMMARY OF THE INVENTION:

The present invention comprises a squirting toy that is housed within a polyethylene (PE) closed cell foam shell. The closed cell shell is non-absorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool. In the preferred embodiment, the squirting toy is comprised of a cylindrical housing and a piston that slides within to force water into or out of the housing via a hole therein. The foam shell

of the preferred embodiment is similar in size and shape to a "swimming noodle", and is therefore more attractive to a child who is familiar with such.

A more complete understanding of the invention will be realized upon review of the following description and drawings of the Preferred embodiment of the invention.

### BRIEF DECRIPTION OF THE DRAWINGS:

Figure 1 is an action view of a squirting toy according to the preferred embodiment of the invention showing water being expelled there-from.

Figure 2 is a cross-sectional view through the toy of Figure 1 in its retracted/empty state.

Figure 3 is an enlarged partial section of the toy of Figure 1 floating in water,

Figure 4 is an action cross-sectional view in showing the intake of water into the toy of Figure 1, and

Figure 5 is an action cross-sectional view in showing the expulsion of water from the toy of Figure 1.

### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT:

The Preferred embodiment of the invention is shown in Figures 1 though 5, where there is depicted a toy 100 for squirting a water stream 102, and which is adapted to float on the water surface 104.

The toy comprises a rigid tubular housing 106 that encloses a hollow cylindrical chamber 110. The forward end 112 of the tubular housing is closed except for a small hole 114. Piston 116 slides longitudinally within chamber 110 and is sealed against the

cylindrical inner surface 120 of the chamber by o-ring 122, which is seated within groove 124 of the piston. The piston separates the chamber 110 into a forward portion 110A and a rear portion 110B. The piston 116 is rigidly connected to shaft 124 at the forward end 126 thereof. Slide bushing 128 supports shaft 124 at the rear end 130 of the tubular housing 106, while allowing longitudinal movement relative thereto. Handle portion 132 is rigidly connected to shaft 124 at the rearward end 134 thereof. Expansion of the handle portion 132 relative to the tubular housing 106, while hole 114 is below the water surface 104, as depicted in Figure 4, causes water to be inhaled into the expanding forward chamber portion 110A, through hole 114. Subsequent retraction of the handle portion 132 relative to the tubular housing 106 causes that water to be exhaled through hole 114 in a powerful stream 102.

Case 1:08-cv-02909-NRB

Tubular shell 138, preferably made of closed-cell polyethylene foam, surrounds tubular housing 106, to provide both a soft protective surface and buoyancy. Other materials may be substituted for polyethylene foam, such as ethylene vinyl acetate closed-cell foam.

Handle portion 132 also includes handle shell 140, which is preferable made of the same foam, and is rigidly connected shaft 124 by means of support bushings 144 and 146. Alternatively, other materials having sufficient buoyancy, softness, and water impermeability, such as polyurethane foam, may be used for both the tubular and handle shells. Or the shells could instead be replaced by blow molded or rotationally molded air-filled cylindrical bladders. When the handle portion is retracts as in Figure 2, the shells create a similar appearance and feel to those of a common "swimming noodle".

It will be appreciated by those skilled in the applicable arts that the foregoing is merely one of many possible embodiments of the invention, and that the invention should therefore only be limited according to the following claims.

### I CLAIM:

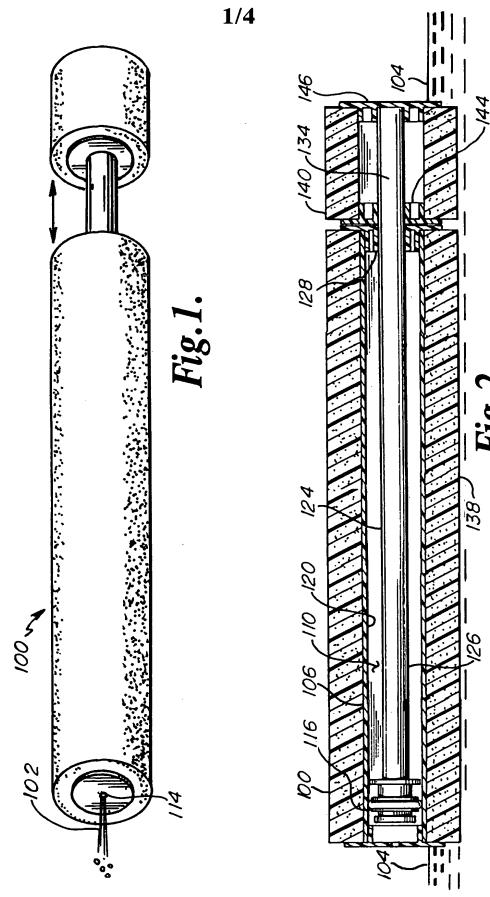
- An encasement for a partially hollow squirting toy comprised of a soft material
  that has buoyancy sufficient to keep the toy afloat in water when the toy is filled
  to its maximum capacity with water.
- 2. The encasement of Claim 1 wherein said soft material is closed-cell polymer foam.
- 3. The encasement of Claim 1 wherein said material is closed-cell polyethylene foam.
- 4. The encasement of Claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.
- 5. A toy for receiving, storing, and squirting water and encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water.
- 6. The toy of Claim 5 wherein said soft material is closed-cell polymer foam.
- 7. The toy of Claim 1 wherein said material is closed-cell polyethylene foam.
- 8. The toy of Claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.
- 9. A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water

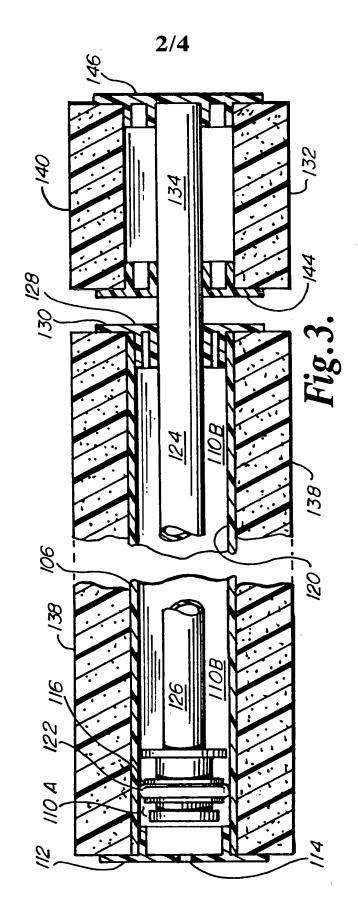
through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water.

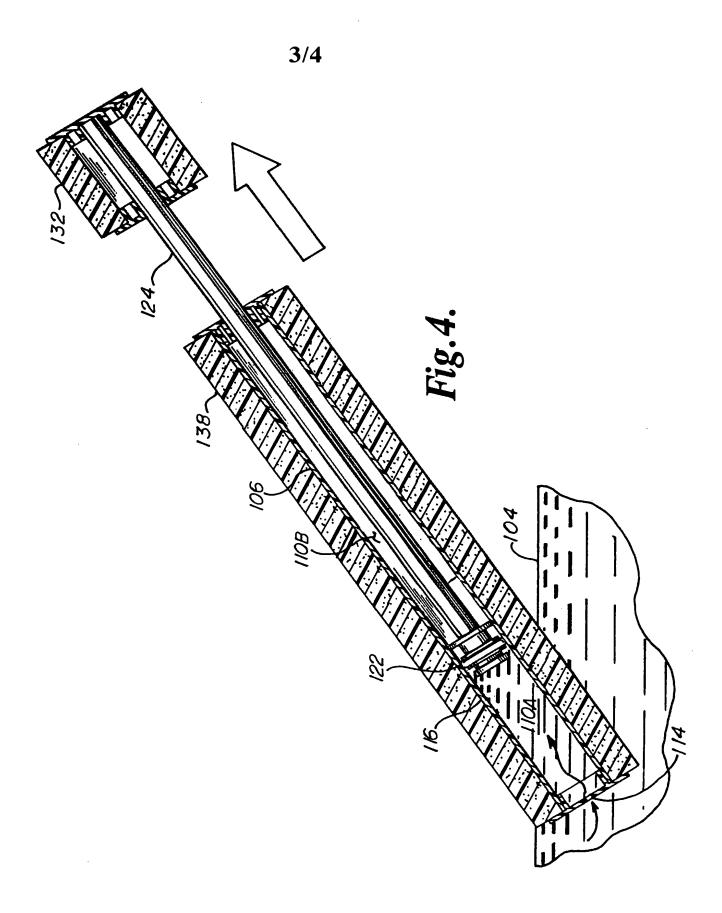
- 10. The toy of Claim 9 wherein said soft material is closed-cell polymer foam.
- 11. The toy of Claim 9 wherein said material is closed-cell polyethylene foam.
- 12. The toy of Claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. The toy of Claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. The toy of Claim 13 wherein said outer shell is cylindrically shaped.
- 15. The toy of Claim 14 wherein said soft material is closed-cell polymer foam.
- 16. The toy of Claim 14 wherein said material is closed-cell polyethylene foam.
- 17. The toy of Claim 14 wherein said material is closed-cell ethylene vinyl acetate foam.

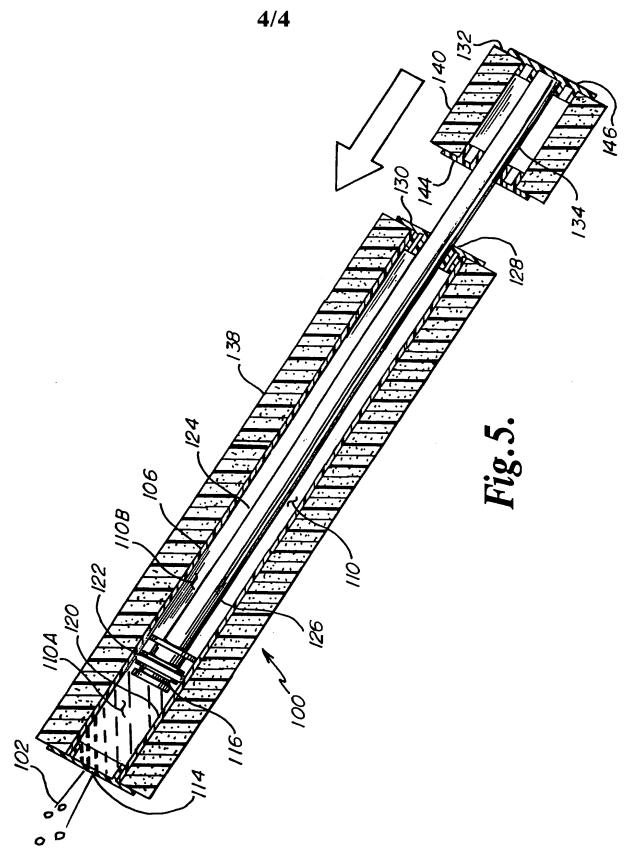
### ABSTRACT:

A squirting toy is comprised of a cylindrical housing and a piston that slides within to force water into or out of the housing via a hole therein. The housing is encased within a polyethylene closed cell foam shell. The shell is non-absorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely when left in water. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool.









PTO/SB/01 (05-03) Approved for use through 04/30/2003. OMB 0651-0032 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. Attorney Docket Number PT-007 **DECLARATION FOR UTILITY OR** First Named Inventor DESIGN Boguslaw Oplowski PATENT APPLICATION COMPLETE IF KNOWN (37 CFR 1.63) Application Number Filing Date Declaration Declaration HEREWITH ΩR Submitted Submitted after Initial Art Unit With Initial Filing (surcharge Filing. (37 CFR 1.16 (e)). **Examiner Name** required) I hereby declare that: Each inventor's residence, mailing address, and citizenship are as stated below next to their name. 1 believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled: SQUIRTING TOY (Title of the Invention) the specification of which X is attached hereto OR was filed on (MM/DD/YYYY) as United States Application Number or PCT International **Application Number** and was amended on (MM/DD/YYYY) (if applicable). I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application. 1 hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? Yes No
Additional foreign applicat	ion numbers ar	e listed on a supplemental pr	iority data sheet PTO/S	B/02B attached hereto.

[Page 1 of 2]

This collection of information is required by 37 CFR 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/01 (05-03)

Approved for use through 04/30/2003. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

### **DECLARATION** — Utility or Design Patent Application

Direct all correspondence to:	. ~	er Number 26 ode Label	250	OR	Corres	pondence address below
Name FRANK M	ARIN	0				
Address 394 MER	LE DITH	1 NECK	RI	>		
City MEREDITI	-1		State ^	) H		<sup>ZIP</sup> 03253
Country USA		Telephone 603-279				79-0159
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.						
NAME OF SOLE OR FIRST IN	VENTOR:	□ Ap	etition has	been filed for thi	s unsig	ned inventor
Given Name (first and middle [if any]) B	00-450	LAW		Family Name or Surname	OR C	COWSKI
		Alousi				Date   08   04   2004
	State CACIF	ORNIA	Country	5 · A	Citize <i>U</i>	
Mailing Address 705 SHAD						
OCEANSIDE	State CA CI	FORNIF	) ZIP	9205	4	Country U · S · /7
NAME OF SECOND INVENTO	R:		□ A	petition has bee	en filed i	for this unsigned inventor
Given Name (first and middle [if any])				Family Name or Surname		
Inventor's Signature						Date
Residence: City	State		Country		Citize	nship
Mailing Address			<u> </u>			
City	State		ZIP		Count	ry
Additional inventors or a legal re	presentative are bei	ing named on the	supplemental s	heet(s) PTO/SB/02/	or 02LR	attached hereto.

[Page 2 of 2]

PTO/S8/81 (05-03) Approved for use through 11/30/2005. OMB 0651-0035

	U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COM	MERC
nder the Paperwork Reduction Act of 1995, no persons are required to respond	d to a collection of information unless it displays a valid OMB control	numbe

# POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

Application Number	
Filing Date	HEREWITH
First Named Inventor	BOGUSLAW ORLOWSKI
Title	SQUIRTING TOY
Art Unit	
Examiner Name	
Attorney Docket Number	PT-007

<u> </u>	Atto	rney Docket Number	PT-007	_/
I hereby appoint:				<del>-</del>
Practitioners at Customer	r Number 26250		Place Customer Number Bar Code Label here	
Practitioner(s) named bel	low:			
FRANK M	Name ARINO	37879	Registration Number	
as my/our attorney(s) or agent(s Trademark Office connected the		d above, and to transact	all business in the United States Patent and	
	ence address for the above-identified a	polication to:		
The above-mentioned Cu				
OR	CONTO Harrison			
Practitioners at Customer	r Number.		Place Customer Number Bar Code Label here	
OR				
Firm or Individual Name	FRANK MAR	2140		
Address	394 MERED	ITH NECK	( RD	
Address				
City	MEREDITH	State	1H Zip 03253	
Country	USA			
Telephone	603 -279 - 0159	Fax E	503-279-0159	
1 am the:  Applicant/Inventor.				
	the entire interest. See 37 CFR 3.71. FR 3.73(b) is enclosed. (Form PTO/SE	3/96).		
	SIGNATURE of Applica	nt or Assignee of Reco	ərd	
Name BOGU	SCAW ORLOW	ISKI		
	naw Orlowsk	<u>,                                      </u>		
Date 08-04	2004	T	elephone (760) 43 9,304,	/
NOTE: Signatures of all the inventor forms if more than one signature is n	s or assignees of record of the entire interest required; see below*.	st or their representative(s) a	re required. Submit multiple	
*Total of	forms are submitted.			

This collection of information is required by 37 CFR 1.31 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT	APPLICATION	SERIAL	NO.	

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE FEE RECORD SHEET

09/20/2004 EHAILE1 00000002 10942326

01 FC:2001

385.00 OP

PTO-1556 (5/87)

### PATENT APPLICATION FEE DETERMINATION RECORD

Application or Docket Number

10941226

		Effe	ctive Octo	ber 1, 20	003			10	772	3 20	
	·	CLAIMS A	S FILED (Colum			umn 2)	SMALI TYPE	ENTITY	, Of		R THAN ENTITY
T	OTAL CLAIMS	S .	177				RAT	FE		RATE	FEE
F	OR .		NUMBER	R FILED	NUM	BER EXTRA	BASIC	EE 385.	00 OF	BASIC FE	770.00
TO	OTAL CHARGE	ABLE CLAIMS	/7 m	inus 20≈	•	_	XS 9	=	OF	XS18=	
INI	DEPENDENT C	CLAIMS	. 2 п	ninus 3 =	• .	-	X43=		OF	You	1
М	JLTIPLE DEPE	NDENT CLAIM F	PRESENT		·			<del> </del>	7	`	<del>                                     </del>
• [	the difference	e in column 1 is	less than z	ero, enter	"0" in (	column 2	+145:		OF	L	
		CLAIMS AS					TOTA	1 38	SOF	•	L
		(Column 1)		(Colum		(Column 3)	SMAL	L ENTIT	Y OR	SMALL	
AMENDMENT A		CLAIMS REMAINING AFTER AMENDMENT		HIGHE NUME PREVIO PAID F	BER	PRESENT EXTRA	RATE	ADD TION/ FEE	AL .	RATE	ADDI- TIONAL FEE
N Q	Total	•	Minus	**		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***		=	X43=		OR	X86=	
	FIRST PRESE	ENTATION OF M	ULTIPLE DE	PENDENT	CLAIM		+145=		OR	+290=	
							TOTA		OR	TOTAL ADDIT. FEE	
•		(Column 1)		(Colum	n 2)	(Column 3)	ADDIT. FE	E <b>L</b>		ADDII. FEE	<b>L</b>
AMENDMENT B		CLAIMS REMAINING AFTER AMENDMENT	٠	HIGHE NUMB PREVIOI PAID F	ER USLY	PRESENT EXTRA	RATE	ADDI TIONA FEE		RATE	ADDI- TIONAL FEE
NON	Total	•	Minus	**		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***		=	X43=		OR	X86=	
	FIRST PRESE	NTATION OF ML	JLTIPLE DEF	PENDENT	CLAIM		+145=		OR	+290=	
							TOTAL ADDIT. FEE		اہیا	TOTAL ADDIT. FEE	•
		(Column 1)		(Columi	n 2)	(Column 3)	ADDIT. PER			ADDII. FEE	
AMENDMENT C		CLAIMS REMAINING AFTER AMENDMENT		HIGHE NUMBE PREVIOL PAID FO	ER JSLY	PRESENT EXTRA	RATE	ADDI- TIONAI FEE		RATE	ADDI- TIONAL FEE
	Total ·	•	Minus	**		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***		=	X43=	1	OR	X86=	
	FIRST PRESE	NTATION OF MU	ILTIPLE DEF	PENDENT (	CLAIM		145-		1 1	+290=	
• 11	the entry in colum	nn 1 is less than th	e entry in colum	mn 2, write "(	)" in colu	ımn 3.	+145=	<b> </b>	OR	+29U=	·
	the *Highest Nur	nber Previously Pa nber Previously Pa	id For IN THIS	S SPACE is I	ess than	,3, enter *3.*	ADDIT. FEE	L		ODIT. FEE	
'	iie nignest Num	ber Previously Paid	ror (lotalor	independent	i) is the l	nignesi number fö	onua tu sue et	propriate b	OX IN COR	ATHT 1.	·j



(Decument 105 Filed 08/20/2008 Page 23 of 64 1 + W

New Attorney Dkt. No. 69281/54 Old Attorney Dkt. No. PT-007

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

Applicant

: Boguslaw Orlowski

Filed

: September 16, 2004

For:

à

0

: SQUIRTING TOY

TC/A.U.

: 3752

Examiner

: TBD

Customer No.

: 1912

"Express Mail" mailing label No. EL 996368350 US

Date of Deposit: August 31, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the

Commissioner for Patents, P.O. Box 1450, Alexandria,

VA 22313-1450.

Name: Vivian Signature:

SUBMISSION OF INFORMATION DISCLOSURE STATEMENT AND REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22323-1450

Sir:

Applicant respectfully requests, pursuant to 37 C.F.R. §§§ 1.56, 1.97 and 1.98, that the references listed on the attached PTO/SB/08A Form (Substitute Form for PTO-1449) be considered and cited in the examination of the aboveidentified patent application.

We also enclose a Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address for the above-identified application.

No fee is deemed necessary in connection with the filing of this Information Disclosure Statement. However, if any fee is required to preserve the

New Attorney Dkt. No. 69281/54 Old Attorney Dkt. No. PT-007

pendency of the application, authorization is hereby given to charge the amount of any such fee to deposit Account No. 01-1785.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant(s) 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

•

ţ

Ý

August 31, 2005

ву: \_\_\_

Benjamin M. Halpern Registration No.: 46,494

PTO/SB/08A (08-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
duction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449/PTO

Sheet 1

## INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete if Known				
Application Number	10/942,326			
Filing Date	September 16,2004			
First Named Inventor	Boguslaw Orlowski			
Art Unit	3752			
Examiner Name	Unknown			
Attorney Docket Number	69281/54	J		

			U. S. PATENT	DOCUMENTS	
Examiner Initials*	Cite No.1	Document Number  Number-Kind Code <sup>2 (# known)</sup>	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		<sup>US-</sup> 213,050	03/11/1879	P.C. Lewis	
		<sup>US-</sup> 1,031,526	07/02/1912	N.H. Cloud, Jr.	
		<sup>US-</sup> 1,394,456	10/18/1921	J. Wanat	
		<sup>US-</sup> 2,573,375	10/30/1951	T.W. Winstead	
		<sup>US-</sup> 4,597,527	07/01/1986	Sands	
		<sup>US-</sup> 4,627,796	12/09/1986	Moore	
		<sup>US-</sup> 5,009,413	04/23/1991	Allen	
		<sup>US-</sup> 5,199,114	04/06/1993	Christopher	
		<sup>US-</sup> 5,928,053	07/27,1999	Henderson	
		<sup>US-</sup> 5,992,697	11/30/1999	James	
		<sup>US-</sup> Des. 26,839	03/30/1897	J. Lines	
		<sup>US-</sup> Des. 240,130	06/01/1976	William A. Folke	
		US-			

	FOREIGN PATENT DOCUMENTS								
Examiner Initials*	Cite No.1	Foreign Patent Document	Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages				
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)	MM-DD-YYYY		Or Relevant Figures Appear	T <sup>6</sup>			
						Щ			

Examiner	Date	
Signature	Considered	

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Nicind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. Applicant is to place a check mark here if English language Translation is attached.

Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND

TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

AUG 3 1 2005 Under the Pa

PTO/SB/82 (09-03)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control numb

# REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

portulto a collection of information unles	s it displays a valid Oivib control number.			
Application Number	10/942,326			
Filing Date	September 16, 2004			
First Named Inventor	Boguslaw Orlowski			
Art Unit	3752			
Examiner Name				
Attorney Docket Number	69281/54 (old no. PT-007)			

I hereby revoke all previous powers of attorney given in the above-identified application.							
A Pow	A Power of Attorney is submitted herewith.						
OR  I hereby appoint the practitioners associated with the Customer Number:  1912							12
	Please change the correspondence address for the above-identified application to:  The address associated with						
	ustomer Numb						
Firm o	r ual Name		• -				
Address							
Address							<u> </u>
City				State		Zip	
Country							
Telephone				Fax			
I am the:  Applicant/Inventor.  Assignee of record of the entire interest. See 37 CFR 3.71.							
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  SIGNATURE of Applicant or Assignee of Record							
Name							
Signature							
Date	08.5	5.101	25	Telephor	ne		
	NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one						
	signature is required, see below*.  *Total of 1 forms are submitted.						

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Confirmation No. 9683

Date of Deposit: February 17, 2006

indicated above and is addressed to the

VA 22313-1450. Name: Vivian Campbell

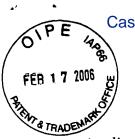
Signature:

"Express Mail" mailing label No. EV 725788849 US

'Express Mail" service under 37 CFR 1.10 on the date

Commissioner for Patents, P.O. Box 1450, Alexandria,

I hereby certify that this paper or fee is being deposited with the United States Postal Service



### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

**Applicants** 

: 3752

Examiner

: TBD

Docket No.

: 69281/54 (old Docket No. PT-007)

Customer No.

: 1912 (old Customer No. 26250)

### **STATUS INQUIRY**

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Applicant respectfully inquires as to the status of the above-identified application. The last correspondence receive from the U.S. Patent Office was a postcard confirming receipt of a submission of an Information Disclosure Statement and a Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address dated August 31, 2005. To date, we have not received any further correspondence.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York February 17, 2006

Page 1 of 1



### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NUMBER FILING OR 371 (c) DATE FIRST NAMED APPLICANT ATTY. DOCKET NO./TITLE

10/942,326 09/16/2004 Boguslaw Orlowski 69281/54

**CONFIRMATION NO. 9683** 

1912 AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 \*OC00000019081986\*

Date Mailed: 06/02/2006

### NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2005.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

LYNN LAM

PTOSS (703) 308-9150

**OFFICE COPY** 



### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. States Alexandria, Viginia 22313-1450 www.uspio.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/942,326	09/16/2004	Boguslaw Orlowski	PT- 007

**CONFIRMATION NO. 9683** 

\*OC00000019081947\*

26250 FRANCIS EDWARD MARINO 394 MEREDITH NECK ROAD MEREDITH, NH 03253

Date Mailed: 06/02/2006

### NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2005.

• The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

LYNN LAM

PTOSS (703) 308-9150

**OFFICE COPY** 

### **EAST Search History**

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	0	(222/079).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 08:24
L2	0	"222"".""079".ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:25
L3	0	"222"".""079".ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:25
L4	0	222/079.ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:26
L5	0	(222/079).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 08:26
L6	337	(222/79).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:15
L7	123376	float	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
L8	2989	squirt	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
Ľ9	991250	tube	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
L10	4	6 and 7 and 8 and 9	US-PGPUB; USPAT	OR	ON	2006/09/18 08:32
L11	498814	polyethylene	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L12	246302	foam	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L13	3534	7 and 11 and 12	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L14	14	8 and 9 and 13	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L15	217	(482/55).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:15
L16	256	(482/111).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:21
·L17	16	6 and pool	US-PGPUB; USPAT	OR	ON	2006/09/18 09:57
L18	301	(92/249).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:57
L19	0	6 and 18	US-PGPUB; USPAT	OR	ON	2006/09/18 09:58
L20	1	pool and 18	US-PGPUB; USPAT	OR	ON	2006/09/18 09:58
S1	0	("45238995670747").PN.	USPAT	OR	OFF	2006/08/29 10:12
S2	1	("4523899").PN.	USPAT	OR	OFF	2004/08/13 08:51

9/18/06 10:27:42 AM

Page 1



### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING D	DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/942,326	09/16/2	004	Boguslaw Orlowski	69281/54	9683
1912	7590	09/27/2006		EXAM	IINER
	ROTHSTEIN	HUSON, G	HUSON, GREGORY L		
90 PARK A NEW YOR	VENUE K. NY 10016			ART UNIT	PAPER NUMBER
	,			3764	•
				DATE MAILED: 09/27/200	06

Please find below and/or attached an Office communication concerning this application or proceeding.

Case 1:08-cv-02909-NRB Docum	ient 12-5 Filed 08/2	20/2008 Page 32 of 64 Ni			
	Application No.	Applicant(s)			
Office Antique Comments	10/942,326	ORLOWSKI, BOGUSLAW			
Office Action Summary	Examiner	Art Unit			
	Gregory L. Huson	3764			
The MAILING DATE of this communication apperiod for Reply	opears on the cover sheet w	vith the correspondence address -			
A SHORTENED STATUTORY PERIOD FOR REP WHICHEVER IS LONGER, FROM THE MAILING - Extensions of time may be available under the provisions of 37 CFR 1 after SIX (6) MONTHS from the mailing date of this communication If NO period for reply is specified above, the maximum statutory perio - Failure to reply within the set or extended period for reply will, by statu Any reply received by the Office later than three months after the mail earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUN. 136(a). In no event, however, may a d will apply and will expire SIX (6) MO tte, cause the application to become a	ICATION. A reply be timely filed  DNTHS from the mailing date of this communication.  ABANDONED (35 U.S.C. § 133).			
Status					
1) Responsive to communication(s) filed on 17	February 2006.				
2a)☐ This action is <b>FINAL</b> . 2b)☒ Th	is action is non-final.				
3) Since this application is in condition for allow	ance except for formal ma	tters, prosecution as to the merits is			
closed in accordance with the practice under	Ex parte Quayle, 1935 C.	D. 11, 453 O.G. 213.			
Disposition of Claims					
4)⊠ Claim(s) <u>1-17</u> is/are pending in the application	n.				
4a) Of the above claim(s) is/are withdr		•			
5) Claim(s) is/are allowed.					
6)⊠ Claim(s) <u>1-17</u> is/are rejected.					
7) Claim(s)is/are objected to.					
8) Claim(s) are subject to restriction and	or election requirement.				
Application Papers					
9) The specification is objected to by the Examir	ner.	•			
10)⊠ The drawing(s) filed on is/are: a)⊠ ad	ccepted or b) objected to	by the Examiner.			
Applicant may not request that any objection to the	e drawing(s) be held in abey	ance. See 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the corre	ection is required if the drawin	g(s) is objected to. See 37 CFR 1.121(d).			
11) The oath or declaration is objected to by the I	Examiner. Note the attache	ed Office Action or form PTO-152.			
Priority under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign	n priority under 35 U.S.C.	§ 119(a)-(d) or (f).			
a) ☐ All b) ☐ Some * c) ☐ None of:					
1. Certified copies of the priority docume	nts have been received.				
2. Certified copies of the priority docume	nts have been received in	Application No			
3. Copies of the certified copies of the pr	iority documents have bee	n received in this National Stage			
application from the International Bure	, , , , , , , , , , , , , , , , , , , ,				
* See the attached detailed Office action for a list of the certified copies not received.					
Attachment(s)		·			
1) Notice of References Cited (PTO-892)		Summary (PTO-413)			
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  Paper No(s)/Mail Date  Notice of Informal Patent Application					
3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 8/31/05.	5) 🔛 Notice of 6) 🔲 Other: _				
	Action 32 ummary	Part of Paper No./Mail Date 20060918			
Office		rantor raper No./Ivian Date 20000910			

Application/Control Number: 10/942,326 Page 2

Art Unit: 3764

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 3. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Henderson as taught by Tagar et al..

Sands shows a similar squirt toy that utilizes a piston in a reciprocating motion to load and discharge water (see the drawing figures and col. 2 lines 14-22).

Sands fails to show the toy encased in foam (of a particular type) to provide buoyancy when the device is used in a pool.

Henderson shows a water toy for use in a pool that provides buoyancy at 20 by means of encasing the tubular toy in 'foam rubber, cork, Styrofoam or the like' for safety (easy to grasp) and buoyancy (to enable it to float to the surface if dropped).

Tagar et al. teach providing buoyancy (through 22) to a similar water squirt toy (fig. 7 and col. 5 lines 19-23) in a pool environment.

Application/Control Number: 10/942,326

one of ordinary skill in the art.

Art Unit: 3764

Thus, it would have been obvious to one of ordinary skill in the art to have provided the Sands' toy with an outer casing of foam or the like as shown by Henderson to provide increased safety and buoyancy in a pool environment as taught by Tagar et al. The particular foam or buoyant material chosen is a function of the size and weight of the device, and the cost of manufacture, as suggested by Henderson and also by applicant's use of multiple materials, and thus represents an obvious design choice to

- 4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thorne shows it is known to use a closed cell polyethylene foam for buoyancy on an aquatic exercise device.
- 5. Any inquiry concerning this communication should be directed to Gregory L. Huson at telephone number 571-272-4887.

Gregory L. Huson

**Supervisory Patent Examiner** 

Page 3

Art Unit 3764

NIV 9 7 1701 15

Substitute for form 1449/PTO

Sheet 1

PTO/SB/08A (08-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Tredemark Office; U.S. DEPARTMENT OF COMMERCE

duction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

## INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Col	mplete if Known	
Application Number	10/942,326	
Filing Date	September 16,2004	
First Named Inventor	Boguslaw Orlowski	
Art Unit	3752	
Examiner Name	Unknown	
Attorney Docket Number	69281/54	

				DOCUMENTS	
Examiner Initials*	Cite No.1	Document Number  Number-Kind Code <sup>2 (F known)</sup>	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
GH.	V	<sup>US-</sup> 213,050	03/11/1879	P.C. Lewis	
GH	1/.	<sup>US-</sup> 1,031,526	07/02/1912	N.H. Cloud, Jr.	
GH	V.	<sup>US-</sup> 1,394,456	10/18/1921	J. Wanat	
GH	V.	<sup>US-</sup> 2,573,375	10/30/1951	T.W. Winstead	
GH	V.	<sup>US-</sup> 4,597,527	07/01/1986	Sands	
GH	V	<sup>US-</sup> 4,627,796	12/09/1986	Moore	
GH	1/	<sup>US-</sup> 5,009,413	04/23/1991	Allen	
CH.	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	US- 5,199,114	04/06/1993	Christopher	
GH	7	<sup>US-</sup> 5,928,053	07/27,1999	Henderson .	
	нγ	US- 5,992,697	11/30/1999	James	
GH	1/	<sup>US-</sup> Des. 26,839	03/30/1897	J. Lines	
GH	1.7	<sup>US-</sup> Des. 240,130	06/01/1976	William A. Folke	
		US-			
·		US-			
		US-			
		US-			

		FORE	IGN PATENT DOCU	MENTS					
Examiner Initials*	Cite No.1	Foreign Patent Document	Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages				
110.		Country Code <sup>3</sup> "Number <sup>4</sup> "Kind Code <sup>8</sup> (if known)	MM-DD-YYYY		Or Relevant Figures Appear	Т			
	<u> </u>					╄			
-	<b> </b>					┢			
	<del> </del>					╁			
						╄			

		·	
Examiner		Date	
Signature	/Gregory Huson/	Considered	00/10/0006
(	/Gregory Huson/	Considered	09/18/2006

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). \*See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. \*Enter Office that Issued the document, by the two-letter code (WIPO Standard ST.3). \*For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. \*Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 If possible. \*Applicant is to place a check mark here if English language Translation is attached.

This collection of Information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

		Case 1:08-cv-02909	9-NRB [	Docum	ent 12-5	Filed 08/2	20/2008	Page	36 of 64
		Notice of Deference	- Oit- d		Application 10/942,326	/Control No.	R	eexaminati	Patent Under on BOGUSLAW
		Notice of Reference	s Citea		Examiner		rt Unit		
		•			Gregory L.	Huson	764	Page 1 of 1	
				U.S. P	ATENT DOCU	MENTS			
*		Document Number Country Code-Number-Kind Code	Date MM-YYYY			Classification			
*	Α	US-5,266,069	11-1993	Thorne	, Lewis C.				482/111
*	В	US-5,231,951	08-1993	Tagar e	et al.		_		114/345
	С	US-				-			
	D	US-							
	Ε	US-							
	F	US-							
	G	US-							
	Н	US-							
	ı	US-							-
	J	US-							
	К	US-		_	"		-		
	L	US-							
	М	US-							
				FOREIGN	PATENT DO	CUMENTS			
*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	(	Country		Name		Classification
	N								
	0				<del></del>				
	Р								
	Q				-				
	R								
	S		ļ		·				
	T					<u> </u>	<del></del>		
*			<u> </u>		ATENT DOCU				
_		Includ	de as applicable	: Author,	itle Date, Pub	lisher, Edition or	Volume, Pert	inent Pages	)
	U	•							
	٧								

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).) Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

W

X

Search Notes

Application/Control No.

10/942,326 Examiner

Gregory L. Huson

Applicant(s)/Patent under Reexamination

ORLOWSKI, BOGUSLAW
Art Unit

3764

	<del></del>		
	CHED		
Class	Subclass	Date	Examiner
222	79, 409	9/18/2006	GLH
446	153, 473	9/18/2006	GLH
482	55, 111	9/18/2006	GLH
92	249	9/18/2006	GLH
			·

INT	INTERFERENCE SEARCHED														
Class	Subclass	Date	Examiner												
-			7.												
<del></del>															

SEARCH NOTES (INCLUDING SEARCH STRATEGY)													
	DATE	EXMR											
Consulted Look (92), Crow (482), Yu (446). Also see east text search attached	9/18/2006	GLH											
- · · · · · · · · · · · · · · · · · · ·													



Document/12/5 Filed 08/20/2008 Page 39 of





## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725788588 US Date of Deposit: November 8, 2006 I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Vivian Campbell Name: Signature

## AMENDMENT UNDER 37 C.F.R. 1.111 IN RESPONSE TO OFFICE ACTION DATED **SEPTEMBER 27, 2006**

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed September 27, 2006, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks** begin on page 5 of this paper.

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

## **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An <u>expandable and contractible</u> toy for receiving, <u>and</u> storing <u>water when disposed towards an expanded configuration</u>, and squirting water <u>when disposed towards a contracted configuration</u>, the toy <u>and being</u> encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape when in the contracted <u>configuration</u>.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (original) The toy of claim 1 wherein said material is closed-cell polyethylene foam.
- 8. (original) The toy of claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.

Page 2 of 6

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the tubular housing to provide the toy with a cylinder shape.

- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. (canceled)
- 15. (original) The toy of claim 14 wherein said soft material is closed-cell polymer foam.
- 16. (original) The toy of claim 14 wherein said material is closed-cell polyethylene foam. Page 3 of 6

Appl. No. 10/942,326 Amdt. Filed 11/8/06 in response to 9/27/06 Office Action

17. (original) The toy of claim 14 wherein said material is closed-cell ethylene vinyl acetate foam.

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

#### REMARKS

Claims 1-13 and 15-17 are pending. By this Amendment, claims 1-4 and 14 are canceled, and claims 5 and 9 are amended.

Reconsideration based on the following remarks is respectfully requested.

The Office Action rejects claims 1-17 under 35 U.S.C. 103(a) over Sands (U.S. Patent No. 4,597,527) in view of Henderson (U.S. Patent No. 5,928,053), further in view of Tagar (U.S. Patent No. 5,231,951). This rejection is respectfully traversed.

The applied references, either taken alone or in combination, do not disclose or suggest an expandable and contractible squirting toy where, <u>inter alia</u>, the toy has a cylinder shape when in the contracted condition, as recited in claim 5, and as similarly recited in claim 9.

One of the advantages provided by the claimed invention is that it resembles a "swimming noodle", particularly when in the contracted configuration, thus making it a more attractive source of entertainment for a child. This is explained in the specification at, for example, page 3, line 24 - page 4, line 2.

The Sands toy is not cylinder shaped, but instead has various protrusions at both ends, so that it does not resemble the "swimming noodle". Thus, the Sands toy is much less attractive to a child compared to the inventive squirting toy. Further, the Henderson patent discloses providing a foam casing only on the handle portion of the toy, so that one would not be motivated based on the teaching of Henderson to encase the entire Sands toy in foam material to provide the Sands toy with a "swimming noodle"-type shape. Tagar is directed to mounting a squirting toy on a flotation device, and is not at

Page 5 of 6

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

all related to encasing such a toy in foam or similar material, or for that matter encasing a toy to provide the toy with a cylinder shape.

For at least these reasons, it is respectfully submitted that independent claims 5 and 9 are in condition for allowance. The dependent claims are also in condition for allowance for the reasons discussed above as well as for the additional features they recite.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

November 8, 2006

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06) Approved for use through 1/31/2007. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Application or Docket Number Filing Date PATENT APPLICATION FEE DETERMINATION RECORD 10/942.326 09/16/2004 To be Mailed Substitute for Form PTO-875 APPLICATION AS FILED - PART I OTHER THAN SMALL ENTITY SMALL ENTITY (Column 1) (Column 2) OR FEE (\$) FOR NUMBER FILED NUMBER EXTRA RATE (\$) FEE (\$) RATE (\$) BASIC FEE N/A N/A N/A N/A SEARCH FEE N/A N/A N/A N/A (37 CFR 1.16(k) **EXAMINATION FEE** N/A N/A N/A N/A (37 CFR 1.16(o), (p), or (q) TOTAL CLAIMS minus 20 = X \$ OR X \$ (37 CFR 1.16(i)) INDEPENDENT CLAIMS = = minus 3 = X \$ X \$ If the specification and drawings exceed 100 sheets of paper, the application size fee due ☐ APPLICATION SIZE FEE is \$250 (\$125 for small entity) for each (37 CFR 1.16(s)) additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s) MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j)) \* If the difference in column 1 is less than zero, enter "0" in column 2. **TOTAL TOTAL** APPLICATION AS AMENDED - PART II OTHER THAN (Column 1) SMALL ENTITY OR SMALL ENTITY (Column 2) (Column 3) CLAIMS HIGHES1 REMAINING PRESENT ADDITIONAL ADDITIONAL **NUMBER** 11/08/2006 RATE (\$) RATE (\$) **AFTFR PREVIOUSLY FXTRA** FFF (\$) FFF (\$) AMENDMENT **AMENDMENT** PAID FOR Total (37 CFR \* 12 Minus \*\* 17 = 0 X \$25 = 0 OR X \$ Independent (37 CFR 1.16(h)) = 0 0 \* 2 Minus \*\*\*3 X \$100 = OR X \$ Application Size Fee (37 CFR 1.16(s)) OR FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j)) TOTAL TOTAL ADD'L 0 OR ADD'L FEE FEE (Column 1) (Column 2) (Column 3) CLAIMS HIGHEST REMAINING PRESENT ADDITIONAL ADDITIONAL NUMBER RATE (\$) RATE (\$) PREVIOUSLY FEE (\$) **AFTER EXTRA** FEE (\$) <u>AMENDMENT</u> PAID FOR AMENDMENT Total (37 CFR 1.16(i)) Minus = X \$ OR X \$ Independent Minus \*\*\* OR X \$ = X \$ Application Size Fee (37 CFR 1.16(s)) FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j)) OR TOTAL TOTAL ADD'L OR ADD'L \* If the entry in column 1 is less than the entry in column 2, write "0" in column 3. Legal Instrument Examiner:

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS

catherine d. smith

ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1

\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

pplication No. : 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725833239 US

Date of Deposit: February 8, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA-22313-1450.

Name: Vivian Campbell

Signature:

## **SUPPLEMENTAL AMENDMENT**

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Further to the Amendment filed November 8, 2006, please amend the aboveidentified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

Supplemental Amdt. Filed 2/8/06

## **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (previously presented) An expandable and contractible toy for receiving, and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (currently amended) The toy of claim 1–5 wherein said material is closed-cell polyethylene foam.
- 8. (currently amended) The toy of claim  $\frac{1-5}{5}$  wherein said material is closed-cell ethylene vinyl acetate foam.

Page 2 of 5

Supplemental Amdt. Filed 2/8/06

9. (previously presented) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the tubular housing to provide the toy with a cylinder shape.

- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. (canceled)
- 15. (currently amended) The toy of claim 14-9 wherein said soft material is closed-cell polymer foam.

Supplemental Amdt. Filed 2/8/06

16. (currently amended) The toy of claim 14-9 wherein said material is closed-cell polyethylene foam.

- 17. (currently amended) The toy of claim 14-9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (new) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Supplemental Amdt. Filed 2/8/06

## **REMARKS**

Claims 1-13 and 15-18 are pending. By this Amendment, claims 7, 8 and 15-17 are amended and claim 18 is added.

Reconsideration of the application based on the remarks presented in the November 8, 2006 Amendments is respectfully requested.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

February 8, 2007

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06)

Approved for use through 1/31/2007. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

P	ATENT APPL	ICATION FE Substitute for			Δ		Docket Number -2,326		ing Date 16/2004	To be Mailed	
	AI	PPLICATION A	AS FILE (Column 1		SMALL	ENTITY 🛛	OR		HER THAN ALL ENTITY		
	FOR	N	, JMBER FIL	<del></del>		RATE (\$)	FEE (\$)		RATE (\$)	FEE (\$)	
	BASIC FEE (37 CFR 1.16(a), (b),	or (c))	N/A		N/A		N/A		1	N/A	. ,
	SEARCH FEE (37 CFR 1.16(k), (i), (i)		N/A		N/A		N/A		1	N/A	
	EXAMINATION FE (37 CFR 1.16(o), (p),		N/A		N/A		N/A			N/A	
	ΓAL CLAIMS CFR 1.16(i))		mir	us 20 = *			x \$ =		OR	x \$ =	
IND	EPENDENT CLAIM CFR 1.16(h))	IS	m	inus 3 = *			x \$ =		1	x \$ =	
	APPLICATION SIZE (37 CFR 1.16(s))	shee is \$2 addit	ts of pape 50 (\$125 ional 50 s	ation and drawir er, the application for small entity) sheets or fraction a)(1)(G) and 37							
Ш	MULTIPLE DEPEN	NDENT CLAIM PR	ESENT (3	7 CFR 1.16(j))				l			
* If	the difference in colu	umn 1 is less than	zero, ente	r "0" in column 2.		TOTAL			TOTAL		
	APP	(Column 1)	AMEND	DED – PART I (Column 2)		SMAL	L ENTITY	OR		ER THAN ALL ENTITY	
AMENDMENT	02/08/2007	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
ME	Total (37 CFR 1.16(i))	* 13	Minus	** 20	= 0		X \$25 =	0	OR	x \$ =	
	Independent (37 CFR 1.16(h))	* 3	Minus	***3	= 0		X \$100 =	0	OR	x \$ =	
\ME	Application S	ize Fee (37 CFR 1	.16(s))								
1	FIRST PRESEN	NTATION OF MULTIF	LE DEPEN	DENT CLAIM (37 CF	FR 1.16(j))				OR		
							TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	
		(Column 1)		(Column 2)	(Column 3)						
L		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
Ä	Total (37 CFR 1.16(i))	*	Minus	**	=		x \$ =		OR	x \$ =	
AMENDMENT	Independent (37 CFR 1.16(h))	*	Minus	***	=		X \$ =		OR	x \$ =	
Ш	Application S	ize Fee (37 CFR 1	.16(s))								
AM	FIRST PRESEN	NTATION OF MULTIF	LE DEPEN	DENT CLAIM (37 CF	FR 1.16(j))				OR		
							TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	
** If	the entry in column the "Highest Numb f the "Highest Numb "Highest Number P	er Previously Paid oer Previously Paid	For" IN TH I For" IN T	HIS SPACE is less HIS SPACE is les	s than 20, enter "20' ss than 3, enter "3".		Linda V	nstrument Ex /. Badie priate box in colu		er:	

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS

ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683
	7590 03/30/2007 THSTEIN & EBENSTE		EXAM	INER .
90 PARK AVE	NUE	· <del></del>	HUSON, GE	REGORY L
NEW YORK, N	NY 10016	•	ART UNIT	PAPER NUMBER
			3751	
SHORTENED STATUTORY	Y PERIOD OF RESPONSE	MAIL DATE	DELIVER	Y MODE
3 MON	NTHS	03/30/2007	PAP	PER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Case 1:08-cv-02909-NRB D	ocument 12-5	Filed 08/20/2008	Page 53 of 64
	Application	n No.	Applicant(s)
	10/942,32	6	ORLOWSKI, BOGUSLAW
Office Action Summary	Examiner		Art Unit
	Gregory L.		3751
The MAILING DATE of this communic	ation appears on the	cover sheet with the c	orrespondence address
Period for Reply  A SHORTENED STATUTORY PERIOD FOR WHICHEVER IS LONGER, FROM THE MA  - Extensions of time may be available under the provisions of after SIX (6) MONTHS from the mailing date of this communing. If NO period for reply is specified above, the maximum stature is reply within the set or extended period for reply with Any reply received by the Office later than three months after earned patent term adjustment. See 37 CFR 1.704(b).  Status  1) Responsive to communication(s) filed	R REPLY IS SET TO ILING DATE OF THE 37 CFR 1.136(a). In no ever ication. In no ever ication. It is not the mailing date of this correct on 08 November 20 Image of the mailing date of this correct on 19 This action is not allowance except a under Ex parte Quego in the application. Withdrawn from correct of the correct of the parte of the part	D EXPIRE 3 MONTH(some processing of the communication of the communicati	S) OR THIRTY (30) DAYS, I. ely filed the mailing date of this communication. O (35 U.S.C. § 133). may reduce any  007.  secution as to the merits is
8) Claim(s) are subject to restriction  Application Papers  9) The specification is objected to by the 10) The drawing(s) filed on is/are: a	Examiner.		examiner.
Applicant may not request that any objecti		· ·	
Replacement drawing sheet(s) including the sath or declaration is objected to be			
Priority under 35 U.S.C. § 119			•
12) Acknowledgment is made of a claim for a) All b) Some * c) None of:  1. Certified copies of the priority do 2. Certified copies of the priority do 3. Copies of the certified copies of application from the Internations  * See the attached detailed Office action	ocuments have bee ocuments have bee the priority docume al Bureau (PCT Rule	n received. n received in Application ents have been receive e 17.2(a)).	on No d in this National Stage
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO SI) Information Disclosure Statement(s) (PTO/SB/08)  Paper No(s)/Mail Date	D-948)	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal Pa 6) Other:	te
U.S. Patent and Trademark Office PTOL-326 (Rev. 08-06)	Office Action Summar		t of Paper No./Mail Date 20070328

Application/Control Number: 10/942,326 Page 2

Art Unit: 3751

1. This action is responsive to applicant's amendments and arguments presented 11/8/06 and 2/8/07.

- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 3. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 4. Claims 5-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Henderson as taught by Tagar et al..

Sands shows a similar squirt toy that utilizes a piston in a reciprocating motion to load and discharge water (see the drawing figures and col. 2 lines 14-22). The Sands toy having a cylinder shape 19, over the greatest portion of its length, when the toy is in the contracted configuration.

Sands fails to show the toy encased in foam (of a particular type) to provide buoyancy when the device is used in a pool.

Page 3

Application/Control Number: 10/942,326

Art Unit: 3751

Henderson shows a water toy for use in a pool that provides buoyancy at 20 by means of encasing the tubular toy in 'foam rubber, cork, Styrofoam or the like' for safety (easy to grasp) and buoyancy (to enable it to float to the surface if dropped).

Tagar et al. teach providing buoyancy (through 22) to a similar water squirt toy (fig. 7 and col. 5 lines 19-23) in a pool environment.

Thus, it would have been obvious to one of ordinary skill in the art to have provided the Sands' toy with an outer casing of foam or the like as shown by Henderson to provide increased safety and buoyancy in a pool environment as taught by Tagar et al. The particular foam or buoyant material chosen is a function of the size and weight of the device, and the cost of manufacture, as suggested by Henderson and also by applicant's use of multiple materials, and thus represents an obvious design choice to one of ordinary skill in the art.

- 5. Applicant's arguments with respect to claims 5-13 and 15-18 have been considered but are moot in view of the new ground(s) of rejection.
- 6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Case 1:08-cv-02909-NRB Document 12-5 Filed 08/20/2008 Page 56 of 64

Application/Control Number: 10/942,326

Art Unit: 3751

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication should be directed to Gregory L.

Huson at telephone number 571-272-4887.

Gregory L. Huson

**Supervisory Patent Examiner** 

Page 4

Art Unit 3751

<del></del>	Index of Claims											Ą	ppl	ica	tio	n/C	Cont	trol	No.			Tí	App Res	olic	ant	(s) ati	/Pa	ten	t u	nder						
													1( E)	)/9 kan	42. nin	,32 er	6						1	OR Art	LO Un	WS It	SK	I, B	og T	U	SLAW		_			
	I SERVED AND COME STATES TO SERVED AND CORES.											G	reg	jor	y L	. H	lusc	on				نل	376	4_			<del></del>									
	√ Rejected — (Through numeral Cancelled												al)			N	N	on-l	Elec	cted		ſ,	A		Ap <sub>l</sub>	pea	 I									
			=	A	llow	ed			+			Re	stri	cte	d				ı	In	terf	ere	nce			9	0	bje	cte	d				•		
· r	Clai	m	Date '							٦	[	Cla	im	T			. 0	ate				٦		Claim	Т				Date	3			٦			
	$\overline{}$		90			Τ					•						٦	Ì				1		T	1		Π	Γ					٦			
Į.	Final	Original	9/18/06									Final	Original										Final	Original												
-	$\dashv$	1 2	1	┥	┽	╁	├	$\vdash$	$\dashv$	-	ŀ			├	$\vdash$	$\dashv$	$\dashv$	-	$\dashv$	$\dashv$	$\dashv$	4	F	-	7	+	$\vdash$	$\vdash$	Н		-	+	7			
F	7	3 4	7	7	4	Ŧ		П	7	_				F		H	4	4	$\dashv$	7	7	7	F	1	7	+	-	F		H		7	$\exists$			
<u> </u>	#	5	1		#	‡	L		#					L			$\exists$	$\exists$		$\exists$	$\downarrow$	1	F	1_	#	#	t	İ				$\exists$	╛			
		7	7	V.	$^{\dagger}$	‡			#	╛						ਖ		╛		$\exists$	士	Ⅎ.			1	土		L	Н		Н		_			
-	$\dashv$	8	4		+	╁	-	$\vdash$	ᆉ	╅				-	┝	Н	-	$\dashv$	-	$\dashv$	+	4	-	┿	+	+-	+	╀	Н	Н	Н	4	$\dashv$			
	4	10 11	7		7	T			7	4				F		$\Box$	$\Box$	$\dashv$	$\Box$	4	$\mp$	7	$\vdash$		1	$\mp$	T					#	ゴ			
		12	1	V	$\pm$	士	上		士												$\pm$	Ⅎ			$\pm$	$\pm$	1	上				$\pm$	$\exists$			
$\vdash$	╁	13 14	1	겍	-	╁	├	H	$\dashv$	┥				├	H	Н	$\dashv$	-	$\dashv$	$\dashv$	╬	┨.	$\vdash$	+	+	+	╀	$\vdash$	H		Н	$\dashv$	$\exists$	•		
·	7	15 16	1		7	Ŧ		П	4	7						口		$\exists$	$\exists$	4	4	_		1	#	#	1	L				$\dashv$	ゴ		•	
	1	7	1	V	1	士	上		$\exists$	╛		_		L								Ⅎ.	E	上	$\pm$	士	$\pm$				Н	$\pm$	Ⅎ			
-	$\dashv$	18		4	+	+	╁╌	Н	┥	$\dashv$				⊢	$\vdash$	Н	$\dashv$	$\dashv$		+	+	$\dashv$	-	+	+	+	╀	⊢	$\vdash$	$\vdash$	Н	-	7			
<u> </u>				7		Ŧ	L		7	4						$\square$	$\Box$	$\dashv$		_	1	╡.		#	#	#	T	T					コ			
	$\dashv$			$\rightrightarrows$		#	上			╛								╛		⇉	1	_՝։		1	$\pm$	$\pm$	t	L				$\perp$	$\exists$			
<b> </b>	$\dashv$		$\dashv$	┪		+-	╁╴	H	$\dashv$	$\dashv$			-	╀	-	Н	-	$\dashv$	$\dashv$	+	$\dashv$	4	-		+	+	+	╀	H	H	Н	4	4			
· F	-			$\dashv$	$\mp$	F		П	7	$\exists$						П	$\Box$	二		4	1	4		1	#	1	1	F					コ			
	$\rightrightarrows$				丰	1			$\dashv$	╡								⇉			士	Ⅎ.			$\pm$	$\pm$	$^{\dagger}$	上			Н					
. E	$\dashv$			Ⅎ	$\perp$	+	╁╴	Н	$\dashv$	┨				┝	H	Н	$\dashv$	$\dashv$	-	┪	+	╣.	-	╁	+	+	╁	╀	$\vdash$	H	Н	-	4			
F	7		$\dashv$	$\dashv$	$\Box$	F			7	4				L	F	П	$\dashv$	$\dashv$	$\dashv$	$\dashv$	7	]		丰	#	#	F					$\dashv$	コ			
	$\dashv$				$\pm$	1			_	⇉.				E			$\exists$				士	Ⅎ゙		1	$\pm$	$\pm$	$\pm$				Н	$\pm$	Ⅎ			
-	┰┼	-		$\dashv$	┰	╁	┢	H	+	┥				┼╌	$\vdash$	Н	$\dashv$	$\dashv$	$\dashv$	+	+	╣.	Ή	+	+	+-	╀	╁	H	H	Н	$\dashv$	긕	•		
F	$\Box$		$\exists$	4		Ţ		П	7						F	П	$\Box$			_	$\dashv$	╡.		1	7	#	F	T				$\dashv$	4			
<u> </u>	$\dashv$			$\exists$	$\pm$	士				Ⅎ										$\exists$	$\dashv$	Ⅎ	上		$\pm$	$\pm$	$\vdash$	$\perp$			$\exists$		$\exists$			
-	$\dashv$			$\dashv$	+	╁	├	H	┥	$\dashv$	ŀ			├	┢	Н	$\dashv$	$\dashv$		$\dashv$	$\dashv$	7	F	-	7	4	$\vdash$	$\vdash$	H	$\vdash$		-	7			
F	$\dashv$			$\exists$	4	Ŧ			7	4	4					口		耳	$\dashv$	$\dashv$	#	╡.		丰	#	1	ļ	二				$\dashv$	╡			
	$\rightrightarrows$				士	$^{\pm}$	上		士	ゴ	ij			L				$\exists$		1	$\pm$	∄:	F		$\pm$	$\pm$	$\pm$	$\vdash$			Н	+	$\dashv$			
<u> </u>	$\dashv$	$\dashv$	$\dashv$	$\dashv$	+	+	$\vdash$	┟┤	+	$\dashv$				H	F	H	$\dashv$	$\dashv$	$\neg$	7	7	7	F	+	Ŧ	F	F	F			П	7	$\exists$			
F	4	$\exists$	4	7	#	1		口	7	$\exists$	Ì						$\exists$	コ	コ	コ	$\downarrow$	1		丰	#	#		上			口	$\exists$	╛			
	$\exists$		口	士	士	$\pm$		$\Box$	士	Ⅎ	ł			$\vdash$		Н		Ⅎ	$\exists$	+	+	7	$\vdash$	$\pm$	+	+	$\pm$	╁		Н	$\vdash \vdash$	$\dashv$	┨			
-	$\dashv$		$\dashv$	$\dashv$	+	+	-	H	+	$\dashv$	ŀ	_		F	$\Box$	Ц	$\dashv$	$\dashv$	$\dashv$	4	$\dashv$	7	F	F	7	Ŧ	F	F	H	Н	$\square$	$\dashv$	7	٠.		
	I				$\perp$				1		t					口	d	口	コ		士	J			土	土					H	士	$\exists$			

U.S. Patent and Trademark Office

Search Notes				

Application/Control No.	Applicant(s)/Patent under Reexamination ORLOWSKI, BOGUSLAW	
Conserve Museus	2764	

SEARCHED				
Class	Subclass	Subclass Date Exam		
222	79, 409	9/18/2006	GLH	
446	153, 473	9/18/2006	GLH	
482	55, 111	9/18/2006	GLH	
. 92	249	9/18/2006	GLH	
above	updated	3/28/07	1821)	
	<b>,</b>			
		•		
			•	
	·			

INTERFERENCE SEARCHED				
Class	Subclass	Date Exami		
		***		
			†	

SEARCH NOTES (INCLUDING SEARCH STRATEGY)			
	DATE	EXMR	
Consulted Look (92), Crow (482), Yu (446). Also see east text search attached	9/18/2006	GLH	
Updated	3/28/07	824	
		÷	
	,		

U.S. Patent and Trademark Office

Part of Paper No. 20060918

EV 725790272 US

June 15, 2007

Viviap Campbe



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/942,326

Confirmation No. 9683

I hereby certify that this paper or fee is being deposited with

the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to

the Commissioner for Patents, P.O. Box 1450, Alexandria, VA

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

R 1.116 IN RESPONSE TO

"Express Mail" mailing label No.

Date of Deposit:

22313-1450.

Name:

Signature:

# AMENDMENT UNDER 37 C.F.R. 1.116 IN RESPONSE TO FINAL REJECTION DATED MARCH 30, 2007

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed March 30, 2007, and further to the telephone interview conducted by Applicant's representative with Examiner Huson on June 12, 2007, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks** begin on page 5 of this paper.

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

## **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along substantially its entire length when in the contracted configuration, the soft material that hashaving a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross section along substantially its entire length when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (previously presented) The toy of claim 5 wherein said material is closed-cell polyethylene foam.

Appl. No. 10/942,326

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

8. (previously presented) The toy of claim 5 wherein said material is closed-cell ethylene vinyl acetate foam.

- 9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, <u>said tubular housing having a first end and a second end</u>, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering <u>substantially</u> the <u>entire</u> tubular housing <u>from the first end to the second end to provide the toy with a cylinder shape, <u>said tubular housing having a uniform cross-section along substantially its entire length when said chamber is fully contracted.</u></u>
- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Page 3 of 6

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

- 14. (canceled)
- 15. (previously presented) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 16. (previously presented) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 17. (previously presented) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section substantially along its entire length when said chamber is fully contracted.

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

#### **REMARKS**

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are amended.

Applicant appreciates the courtesies extended to Applicant's representative by Examiner Huson during the June 12, 2007 telephone interview.

Reconsideration based on the following remarks is respectfully requested.

The Office Action rejects claims 5-13 and 15-18 under 35 U.S.C. 103(a) over Sands (U.S. Patent No. 4,597,527) in view of Henderson (U.S. Patent No. 5,928,053) and Tagar et al. (U.S. Patent No. 5,231,951). This rejection is respectfully traversed.

Sands, alone or in combination with Henderson and Tagar, does not disclose or suggest a squirting toy the cylinder of which is encased in a soft material along substantially its entire length when in a contracted configuration and that has a uniform cross-section along substantially its entire length, as recited in claim 5, and as similar recited in claims 9 and 18.

The Sands toy does not have a uniform cross section along its length, but instead has various protrusions at both ends. Thus, the Sands toy does not resemble the "swimming noodle", and is much less attractive to a child compared to the inventive squirting toy.

The Office Action cites the Henderson patent to show that it would have been obvious to encase the toy in a soft material. Although the Henderson patent teaches the use of a foam rubber handle 28 on a toy that uses a whipping action to fling water, the handle is only disposed at one end of the toy, and not over substantially the entire length

Page 5 of 6

Appl. No. 10/942,326

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

of the toy, as in the claimed invention. Thus, the whipping action of the Henderson toy

presents a hazard to children using the toy since the end to be whipped is not encased in

a soft material. In contrast, the inventive toy is encased in a soft material, providing a

much safer product as compared to the prior art.

Tagar is directed to mounting a squirting toy on a flotation device, and is not at

all related to encasing such a toy in foam or similar material.

For at least these reasons, it is respectfully submitted that independent claims 5, 9

and 18 are in condition for allowance. The dependent claims are also in condition for

allowance for the reasons discussed above as well as for the additional features they

recite.

Applicant respectfully requests that a timely Notice of Allowance be issued in this

case.

If any further fees are required to preserve the pendency of the subject

application, please debit Deposit Account No. 01-1785. Likewise, if there is

overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Attorneys for Applicants

90 Park Avenue

New York, NY 10016

(212) 336-8000

Dated: New York, New York

June 15, 2007

Renjamin M. Halnern

Registration No.: 46,494

Page 6 of 6

372212.1

64

EXHIBIT 5
File Wrapper Part 2 of 7,281,642 B2

PTO/SB/06 (07-06) Approved for use through 1/31/2007. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Application or Docket Number Filing Date PATENT APPLICATION FEE DETERMINATION RECORD 09/16/2004 10/942,326 To be Mailed Substitute for Form PTO-875 APPLICATION AS FILED - PART I OTHER THAN SMALL ENTITY OR SMALL ENTITY (Column 1) (Column 2) NUMBER FILED NUMBER EXTRA RATE (\$) FEE (\$) RATE (\$) FOR FEE (\$) ☐ BASIC FEE N/A N/A N/A N/A (37 CFR 1.16(a), (b), or (c)) SEARCH FEE N/A N/A N/A N/A (37 CFR 1.16(k), (i), or (m)) ■ EXAMINATION FEE N/A N/A N/A N/A (37 CFR 1.16(o), (p), or (q)) TOTAL CLAIMS minus 20 = X \$ OR X \$ (37 CFR 1.16(i)) INDEPENDENT CLAIMS X \$ X \$ minus 3 = (37 CFR 1.16(h)) If the specification and drawings exceed 100 sheets of paper, the application size fee due ☐ APPLICATION SIZE FEE is \$250 (\$125 for small entity) for each (37 CFR 1.16(s)) additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s). MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j)) \* If the difference in column 1 is less than zero, enter "0" in column 2. TOTAL TOTAL APPLICATION AS AMENDED - PART II OTHER THAN (Column 1) (Column 3) SMALL ENTITY SMALL ENTITY (Column 2) OR CLAIMS HIGHEST REMAINING NUMBER PRESENT ADDITIONAL ADDITIONAL 02/08/2007 RATE (\$) RATE (\$) **AFTER PREVIOUSLY FXTRA** FEE (\$) FEE (\$) AMENDMENT **AMENDMENT** PAID FOR Total (37 CFR 13 Minus ·· 20 = 0 X \$25 = 0 OR X \$ Independent (37 CFR 1.16(h)) • 3 Minus \*\*\*3 = 0 X \$100 = 0 OR X \$ Application Size Fee (37 CFR 1.16(s)) OR FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j)) TOTAL TOTAL ADD'L 0 OR ADD'L FEE (Column 1) (Column 2) (Column 3) CLAIMS HIGHEST REMAINING NUMBER PRESENT ADDITIONAL ADDITIONAL RATE (\$) RATE (\$) **AFTER PREVIOUSLY EXTRA** KEE (\$) FEE (\$) AMENDMENT PAID FOR Total (37 CFR 20 Minus X \$ OR X \$ ENDMI Independent (37 CFR 1.16(h)) Minus OR = X \$ X S Application Size Fee (37 CFR 1.16(s)) FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j)) OR TOTAL ADD'L OR ADD'L FEE \* If the entry in column 1 is less than the entry in column 2, write "0" in column 3. Legal Instrument Examiner: \*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450, DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

\*\*\* If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

Linda W. Badie

## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683	
1912	7590 06/22/2007	TID	EXAM	IINER	
AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE			MAHONE, KRISTIE ANNETTE		
NEW YORK,	NY 10016		ART UNIT	PAPER NUMBER	
		3751			
				<del></del>	
	•		MAIL DATE	DELIVERY MODE	
			06/22/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Case Luo-cv-uzgug-NRB Document	Application I	No.	Applicant(s)	<u> </u>
Interview Summary	10/942,326		ORLOWSKI, BO	GUSLAW
interview Summary	Examiner	-	Art Unit	
	Gregory L. Hu	ison	3751	
All participants (applicant, applicant's representative, PTC	personnel):			
(1) <u>Gregory L. Huson</u> .	(3)			
(2) <u>Ben Halpern</u> .	(4)			
Date of Interview: <u>12 June 2007</u> .				
Type: a)⊠ Telephonic b)□ Video Conference c)□ Personal [copy given to: 1)□ applicant	2)⊡ applicant	s representative	. · . ]	
Exhibit shown or demonstration conducted: d) Yes If Yes, brief description:	e)⊠ No.			
Claim(s) discussed: <u>5-13 and 15-18</u> .				
Identification of prior art discussed: of record, as applied.	,			
Agreement with respect to the claims f)⊠ was reached.	g)⊡ was not re	eached. h)⊡ N	/A.	
Substance of Interview including description of the general reached, or any other comments: <u>See Continuation Sheet</u>		t was agreed to	if an agreement	was
(A fuller description, if necessary, and a copy of the amen allowable, if available, must be attached. Also, where no allowable is available, a summary thereof must be attached	copy of the ame			
THE FORMAL WRITTEN REPLY TO THE LAST OFFICE INTERVIEW. (See MPEP Section 713.04). If a reply to the GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER INTERVIEW DATE, OR THE MAILING DATE OF THIS IN FILE A STATEMENT OF THE SUBSTANCE OF THE INTERQUIREMENTS on reverse side or on attached sheet.	e last Office ac R OF ONE MON TERVIEW SUM	tion has already ITH OR THIRTY IMARY FORM, \	been filed, APPI DAYS FROM T WHICHEVER IS	ICANT IS
		,		
			•	
Examiner Note: You must sign this form unless it is an				
Attachment to a signed Office action.	1	Examiner's signa	ature, if required	<del></del>

Document 12-6

Application No. 10/942,326 Filed 08/20/2008 Page 5 of 40

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: It was agreed that adding the limitations "the toy having a uniform cross section across it's entire length when in the contracted configuration" and "the soft bouyant material encasing the toy along it's entire length when in the contracted configuration" to all of the independent claims appears to overcome the prior art as applied. An updated search will be conducted when an amendment after final containing the proposed limitations is filed. Applicant's informal fax of 6/11/07 is attached to this interview summary.

2mg// Lind 6/R/87 Primary Examinar JUN-11-2007 15:17

AMSTER ROTHSTEIN EBENSTIE

1 212 336 8001

P.001



FACSIMILE

90 Park Avenue

New York NY 10016

Main

212 336 8000

Fax

212 336 8001

Wcb

www.arclaw.com

June 11, 2007

To:

Examiner Huson

Fax:

571-273-4887

U.S. PTO

Voice:

571-272-4887

From:

Benjamin M. Halpern, Esq.

Re:

U.S. Patent Application Ser. No. 10/942,326 (69281/54) (69281.54)

Prepd. by:

bmh

Return to: bmh

No. of pages including cover:

2

Examiner Huson:

As requested, attached is a proposed agenda for the telephone interview to be conducted in the above-identified patent application.

After you have reviewed the agenda, please contact me to schedule a time for the telephone interview. I am available any day this week.

Thanks.

Benjamin M. Halpern 212-336-8095( phone) 212-336-8001 (fax)

This transmission is intended only for the party to whom it is addressed and may contain privileged or confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this transmission is prohibited. If you received this transmission in error, please notify us immediately by telephone and return this transmission and any copies to us by mail. For missing or illegible pages please call the fax operator at 212-336-8000.

## U.S. PATENT APPLICATION SERIAL NO. 10/942,326 AGENDA FOR EXAMINER INTERVIEW

The following is an agenda for the telephone interview to be conducted by Applicant's representative with Examiner Huson:

- 1. Applicant suggests amending the claims to emphasize that the claimed toy has a uniform cross section along its entire length when in the contracted configuration. None of the applied references teach this feature. Sands, for example, discloses a toy water gun having numerous protrusions along its length, particularly at the longitudinal end portions. The uniform cross section allows the inventive toy to take on the appearance of a "swimming noodle".
- 2. Applicant also suggests amending the claims to recite that the soft material that encases the toy extends across the entire length of the toy. The soft material provides both buoyancy and protection from injury. None of the applied references teach this feature. Henderson, for example, teaches the use of a foam rubber handle 28, but the foam rubber is only disposed at one end of the toy. Thus, the whipping action of the Henderson toy is particularly dangerous, since the end to be whipped is not encased in a soft material.

The Applicant is willing to submit one or both of the above-suggested amendments to further distinguish from the applied references. Any other suggestions by the Examiner would of course be appreciated.

After reviewing this agenda, Examiner Huson is kindly requested to contact Applicant's representative to schedule a time for the telephone interview.

372036.1

Case 1:08-cv-02909-NRB Document 12-6 Filed 08/20/2008 Page 8 of 40



#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725790167 US

Date of Deposit: July 10, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450.

Name: Vivian Campbell Signature:

#### SUPPLEMENTAL AMENDMENT

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Further to the Amendment filed June 15, 2007, and further in response to the Office Action mailed March 30, 2007, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

#### Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

#### **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along substantially-its entire length when in the contracted configuration, the soft material having a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross section along substantially-its entire length when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (previously presented) The toy of claim 5 wherein said material is closed-cell polyethylene foam.
- 8. (previously presented) The toy of claim 5 wherein said material is closed-cell ethylene

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

vinyl acetate foam.

- 9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering substantially the entire tubular housing from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section along substantially its entire length when said chamber is fully contracted.
- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

14. (canceled)

- 15. (previously presented) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 16. (previously presented) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 17. (previously presented) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section substantially along its entire length when said chamber is fully contracted.

Document 12-6 Case 1:08-cv-02909-NRB Filed 08/20/2008 Page 12 of 40

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

#### REMARKS

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are amended.

The amendments presented herein are made in response to the telephone interview conducted on July 3, 2007 between Applicant's representative and Examiner Huson. The present amendments remove the term "substantially" from the claims to overcome the current claim rejections and are made without prejudice to Applicant's potential pursuit of patent protection based on claims directed to the present invention which include the term "substantially".

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP **Attorneys for Applicants** 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

July 10, 2007

Registration No.: 46,494

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

#### **REMARKS**

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are amended.

The amendments presented herein are made in response to the telephone interview conducted on July 3, 2007 between Applicant's representative and Examiner Huson. The present amendments remove the term "substantially" from the claims to overcome the current claim rejections and are made without prejudice to Applicant's potential pursuit of patent protection based on claims directed to the present invention which include the term "substantially".

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

July 10, 2007

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06)

Approved for use through 1/31/2007. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875					Δ		Docket Number 2,326		ing Date 16/2004	To be Mailed		
APPLICATION AS FILED - PART I (Column 1) (Column 2)							SMALL	ENTITY 🛛	OR		HER THAN ALL ENTITY	
	FOR		NUMBER FII	_ED	NUN	MBER EXTRA		RATE (\$)	FEE (\$)		RATE (\$)	FEE (\$)
	BASIC FEE (37 CFR 1.16(a), (b),	or (c))	N/A			N/A		N/A			N/A	
	SEARCH FEE (37 CFR 1.16(k), (i),	or (m))	N/A			N/A		N/A			N/A	
	EXAMINATION FE (37 CFR 1.16(o), (p),		N/A			N/A		N/A			N/A	
TO <sup>-</sup> (37	ΓAL CLAIMS CFR 1.16(i))		mir	nus 20 = *				x \$ =		OR	x \$ =	
IND	EPENDENT CLAIM CFR 1.16(h))	1S	m	inus 3 = *				x \$ =			x \$ =	
	APPLICATION SIZE (37 CFR 1.16(s))	FEE s is a	heets of papers \$250 (\$125	er, the app for small e sheets or fi	lication entity) raction	thereof. See						
	MULTIPLE DEPEN	NDENT CLAIM	1 PRESENT (3	7 CFR 1.16(j	))							
* If t	the difference in col	umn 1 is less t	than zero, ente	r "0" in colur	mn 2.			TOTAL			TOTAL	
	APP	(Column ´	AS AMENE	(Columr	n 2)	(Column 3)		SMAL	L ENTITY	OR		ER THAN ALL ENTITY
AMENDMENT	07/10/2007	CLAIMS REMAINING AFTER AMENDME		HIGHEST NUMBER PREVIOU PAID FOR	JSLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
ME	Total (37 CFR 1.16(i))	* 13	Minus	** 20		= 0		X \$25 =	0	OR	x \$ =	
iz I	Independent (37 CFR 1.16(h))	* 3	Minus	***3		= 0		X \$100 =	0	OR	x \$ =	
√ME	Application S	ize Fee (37 Cl	FR 1.16(s))									
/	FIRST PRESE	NTATION OF MU	MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						OR			
								TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	
		(Column 1		(Columr		(Column 3)						_
_		CLAIMS REMAININ AFTER AMENDME	IG	HIGHE NUMBI PREVIOL PAID F	ER JSLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
U	Total (37 CFR 1.16(i))	*	Minus	**		=		x \$ =		OR	x \$ =	
AMENDMENT	Independent (37 CFR 1.16(h))	*	Minus	***		=		x \$ =		OR	x \$ =	
Ш	Application S	ize Fee (37 Cl	FR 1.16(s))									
AM	FIRST PRESE	NTATION OF MU	JLTIPLE DEPEN	DENT CLAIM	(37 CFF	R 1.16(j))				OR		
							• '	TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	
** If *** I	FEE FEE  If the entry in column 1 is less than the entry in column 2, write "0" in column 3.  If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".  If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".  The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.											

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS

ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

The



#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

"Express Mail" mailing label No. EV 725835637 US

I hereby certify that this paper or fee is being deposited with the United States Postal Service

"Express Mail" service under 37 CFR 1.10 on the date

Commissioner for Patents, P.O. Box 1450, Alexandria,

Inventor

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3751

Examiner

: Mahone, Kristie Annette

Docket No.

: 69281/54

Customer No.

: 1912

Name: Vivian Campbell
Signature: What - Au-

indicated above and is addressed to the

Date of Deposit: July 12, 2007

VA 22313-1450.

#### INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22323-1450

Sir:

Applicant respectfully requests pursuant to 37 C.F.R. §§§ 1.56, 1.97 and 1.98, that the reference listed on the attached PTO/SB/08A Form (Substitute Form for PTO-1449) be considered and cited in the examination of the above-identified patent application. The reference is cited in the International Search Report dated May 8, 2007 (copy attached) of the International Application No. PCT/US05/17102 (69281/51).

No item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a

Information Disclosure Statement dated July 12, 2007

counter-part foreign application not more than three months prior to the filing of this statement.

We hereby authorize you to charge the \$180.00 fee for the filing of this Information Disclosure Statement to our deposit Account No. 01-1785. A copy of this document is enclosed.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant(s) 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

July 12, 2007

Benjamin M. Halpern

Registration No.: 46,494

25		
SIPE	(AZ)	
	7997 US	der the Paperwork Reduction Act of 1995, no persons are
JUL 12		ubstitute for form 1449/PTO
B	J. C.	
WI & TRAI	EMP	INFORMATION DISCLOSUR

US-

PTO/SB/08A (04-07) Approved for use through 09/30/2007. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

required to respond to a collection of information unless it contains a valid OMB control number.

Filing Date **INFORMATION DISCLOSURE** STATEMENT BY APPLICANT Art Unit (Use as many sheets as necessary)

Complete if Known Application Number 10/942,326 September 16, 2004 First Named Inventor Boguslaw Orlowski 3751 Mahone, Kristie Annette Examiner Name 69281/54 Attorney Docket Number

Sheet 1 of 1 **U. S. PATENT DOCUMENTS** Publication Date Name of Patentee or Pages, Columns, Lines, Where Examiner Cite **Document Number** Relevant Passages or Relevant MM-DD-YYYY Applicant of Cited Document Initials\* No Figures Appear Number-Kind Code<sup>2 (# known)</sup> <sup>US-</sup> 4,615,488 10-07-1986 Sands US-US-ÜS-US-US-US-US-US-US-US-US-US-US-US-US-US-US-

	FOREIGN PATENT DOCUMENTS								
Examiner Initials*	Cite No.1	Foreign Patent Document	Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages	T-6			
	Country Code <sup>3</sup> Number <sup>4</sup> Kind Code <sup>5</sup> (if know		MM-DD-YYYY		Or Relevant Figures Appear				
		Int'l Search Report	05-08-2007						
						Ļ			
						L			
						┡			
						Ļ			
						l			

Examiner	Date	
Signature	Considered	
_	1	

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup>Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup>Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup>Applicant is to place a check mark here if English language

Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND

TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

#### UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO. FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/942,326 09/16/2004		Boguslaw Orlowski	69281/54	9683	
	7590 07/16/200 FHSTEIN & EBENST	EXAMINER			
90 PARK AVE	NUE		MAHONE, KRISTIE ANNETTE		
NEW YORK, 1	NY 10016		ART UNIT	PAPER NUMBER	
		·	3751		
			MAIL DATE	DELIVERY MODE	
			07/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Case 1:08-cv-02909-NRB Documer	nt 12-6 Filed 08/20/2008 Application No.	Page 19 of 40 Applicant(s)
Advisory Action	10/942,326	ORLOWSKI, BOGUSLAW
Before the Filing of an Appeal Brief	Examiner	Art Unit
-	Kristie A. Mahone	3751
The MAILING DATE of this communication appe		correspondence address
THE REPLY FILED <u>16 June 2007</u> FAILS TO PLACE THIS APP		
<ol> <li>The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the followalces the application in condition for allowance; (2) a Notal Request for Continued Examination (RCE) in complian time periods:         <ul> <li>The period for reply expires 3 months from the mailing date</li> </ul> </li> </ol>	n the same day as filing a Notice of wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in o ce with 37 CFR 1.114. The reply m	Appeal. To avoid abandonment of fidavit, or other evidence, which compliance with 37 CFR 41.31; or (3)
b) The period for reply expires on: (1) the mailing date of this no event, however, will the statutory period for reply expire	Advisory Action, or (2) the date set forth	in the final rejection, whichever is later. In
Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP 7	(b). ONLY CHECK BOX (b) WHEN THI	
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of expunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	e on which the petition under 37 CFR 1. Attension and the corresponding amount shortened statutory period for reply orig ar than three months after the mailing da	of the fee. The appropriate extension fee pinally set in the final Office action; or (2) as
<ol> <li>The Notice of Appeal was filed on A brief in comfiling the Notice of Appeal (37 CFR 41.37(a)), or any exterm a Notice of Appeal has been filed, any reply must be filed AMENDMENTS</li> </ol>	ension thereof (37 CFR 41.37(e)), to	o avoid dismissal of the appeal. Since
<ol> <li>The proposed amendment(s) filed after a final rejection,</li> </ol>		
<ul> <li>(a) ☐ They raise new issues that would require further of</li> <li>(b) ☐ They raise the issue of new matter (see NOTE below.</li> </ul>		TE below);
(c) ☐ They raise the issue of new matter (see No 12 below)  (c) ☐ They are not deemed to place the application in beautiful appeal; and/or		ducing or simplifying the issues for
(d) They present additional claims without canceling a	corresponding number of finally re	jected claims.
NOTE: (See 37 CFR 1.116 and 41.33(a))	•	
4. The amendments are not in compliance with 37 CFR 1.		ompliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s		timely filed amandment canceling the
<ol> <li>Newly proposed or amended claim(s) would be a non-allowable claim(s).</li> </ol>		
7.  For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is profile. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: Claim(s) withdrawn from consideration:	☑ will not be entered, or b) ☐ winded below or appended.	ill be entered and an explanation of
AFFIDAVIT OR OTHER EVIDENCE		
<ol> <li>The affidavit or other evidence filed after a final action, b because applicant failed to provide a showing of good ar was not earlier presented. See 37 CFR 1.116(e).</li> </ol>	ut before or on the date of filing a N nd sufficient reasons why the affida	otice of Appeal will <u>not</u> be entered vit or other evidence is necessary and
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to	g a Notice of Appeal, but prior to the overcome <u>all</u> rejections under appe	e date of filing a brief, will <u>not</u> be eal and/or appellant fails to provide a

showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 13. Other: \_\_\_\_.

sun U **GREGORY HUSON** SUPERVISORY PATENT EXAMINER **TECHNOLOGY CENTER 3700** 

Case 1:08-cv-02909-NRB Document 1	2-6 Filed 08/20/2008	Page 20 of 40					
	Application No.	Applicant(s)					
Examiner-Initiated Interview Summary	10/942,326	ORLOWSKI, BOGUSLAW					
Lanniner-initiated interview Summary	Examiner	Art Unit					
•	Kristie A. Mahone	3751					
All Participants:	Status of Application: After	er Final					
(1) <u>Kristie A. Mahone</u> .	(3) <u>Benjamin Halpern</u> .						
(2) <u>Gregory L. Huson</u> .	(4)						
Date of Interview: 3 July 2007	Time: <u>12:00 P. M.</u>						
Type of Interview:  ☐ Telephonic ☐ Video Conference ☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)  Exhibit Shown or Demonstrated: ☐ Yes ☐ No If Yes, provide a brief description:							
Part I.							
Rejection(s) discussed:							
Claims discussed: 5-13, 15-18							
Prior art documents discussed: of record, as applied							
Part II.							
SUBSTANCE OF INTERVIEW DESCRIBING THE GENER See Continuation Sheet	RAL NATURE OF WHAT WAS	DISCUSSED:					
Part III.	•						
<ul> <li>It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.</li> <li>It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.</li> </ul>							
26 h							
(Examiner/SPE Signature) (Applicant/	Applicant's Representative Si	gnature – if appropriate)					

Ε

Continuation of Substance of Interview including description of the general nature of what was discussed: Examiner proposed elimination of the term "substantially" from the independent claims to parrallel the claim language previously offered by Applicant's attorney (See Paper No. 20070512). It was explained that the term "substantially" could be interpreted as 50% or more of the entire length. No agreement was reached in this regard. An advisory action will be mailed.

#### **EAST Search History**

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L2	499	(222/79).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB		OFF	2007/07/30 10:32
L3	32	(222/79).CCLS.	US-PGPUB	OR	OFF -	2007/07/30 10:32
L5	1103	(222/409).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB		OFF	2007/07/30 10:33
L6	0	(222/409).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:33
L7	363	(446/153).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB		OFF	2007/07/30 10:34
L8	34	(446/153).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:34
L9	289	(446/473).CCLS.	US-PGPUB USPAT; USOCR; FPRS; EPO; JPO; DERWENT IBM_TDB		OFF	2007/07/30 10:34
L10	10	(446/473).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:35
L13	307	(482/55).CCLS.	US-PGPUB USPAT; USOCR; FPRS; EPO; JPO; DERWENT IBM_TDB		OFF	2007/07/30 10:36
L14	31	(482/55).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:36
L15	298	(482/111).CCLS.	US-PGPUB USPAT; USOCR; FPRS; EPO; JPO; DERWENT IBM_TDB		OFF	2007/07/30 10:36

7/30/2007 10:58:16 AM

#### **EAST Search History**

			_			
L16	20	(482/111).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:37
L17	0	(92/249).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:37
L18	526	(92/249).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:42
L19	0	("(L3L6L8L10L14L16L17)AND((toyg un)ANDbouyan\$2cylinder)").PN.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:44
L20	0	(L3 L6 L8 L10 L14 L16 L17) AND((toy gun) AND bouyan\$2 AND cylinder).CLM.	US-PGPUB	OR	OFF	2007/07/30 10:45
L21	0	(L3 L6 L8 L10 L14 L16 L17) AND (bouyan\$2 AND cylinder).CLM.	US-PGPUB	OR .	OFF .	2007/07/30 10:46
L22	0	(L3 L6 L8 L10 L14 L16 L17) AND ( bouyan\$2 AND (toy gun)).CLM.	US-PGPUB	OR	OFF	2007/07/30 10:46

Page 2 7/30/2007 10:58:16 AM C:\Documents and Settings\kmahone\My Documents\EAST\Workspaces\10942326Orlowski.wsp



#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

#### NOTICE OF ALLOWANCE AND FEE(S) DUE

1912

7590

08/03/2007

AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 EXAMINER

MAHONE, KRISTIE ANNETTE

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 08/03/2007

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683

TITLE OF INVENTION: SQUIRTING TOY

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	11/05/2007

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

#### HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2. the ISSUE FEE shown above.

PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (FSPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a required to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

#### Case 1:08-cv-02909-NRBPARTOR: unfletc(s) 2 F6ANSNF11etcA08/20/2008 Page 25 of 40

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE

Mail Stop ISSUE FEE Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks I through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications. The CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address) Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission. 1912 7590 08/03/2007 Certificate of Mailing or Transmission AMSTER, ROTHSTEIN & EBENSTEIN LLP I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below. 90 PARK AVENUE NEW YORK, NY 10016 (Depositor's name (Signature (Date APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/942,326 09/16/2004 69281/54 Boguslaw Orlowski 9683 TITLE OF INVENTION: SQUIRTING TOY APPLN. TYPE SMALL ENTITY **ISSUE FEE DUE** PUBLICATION FEE DUE PREV. PAID ISSUE FEE TOTAL FEE(S) DUE DATE DUE YES \$700 nonprovisional \$300 \$0 \$1000 11/05/2007 **EXAMINER** ART UNIT **CLASS-SUBCLASS** MAHONE, KRISTIE ANNETTE 3751 222-079000 1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). 2. For printing on the patent front page, list the names of up to 3 registered patent attorneys ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached. or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required. listed, no name will be printed. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type) PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment. (A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY) Missis check the appropriate assignce category or categories (will not be printed on the patent): 🔲 Individual 🔲 Corporation or other private group entity 🔲 Government The following fcc(s) are submitted: 4b. Payment of Fec(s): (Please first reapply any previously paid issue fee shown above) ☐ Issue Fee ☐ A check is enclosed. Publication Fee (No small entity discount permitted) Payment by credit card. Form PTO-2038 is attached. Advance Order - # of Copies The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number (enclose an extra copy of this form). 5. Change in Entity Status (from status indicated above) a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2). NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office. Authorized Signature Date Typed or printed name Registration No. This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Recandria, Virginia 22313-1450.

PTOL-85 (Rev. 08/07) Approved for use through 08/31/2007.

पुर्तित the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

<u> </u>			L. mmonumu noguramus	CONTRIBUTION		
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683		
) 1912 7	7590 . 08/03/2007	EXAMINER				
AMSTER, ROT	HSTEIN & EBENSTI	EIN LLP	MAHONE, KRISTIE ANNETTE			
90 PARK ÁVENT	UE		ART UNIT	PAPER NUMBER		
NEW YORK, NY	10016		3751	<del></del>		
			DATE MAILED: 08/03/200	7		

#### Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 219 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 219 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

·	Application No.	Applicant(s)			
	10/942,326	ORLOWSKI, BOGUSLAW			
Notice of Allowability	Examiner	Art Unit			
	Kristie A. Mahone	3751			
The MAILING DATE of this communication apportant claims being allowable, PROSECUTION ON THE MERITS IS nerewith (or previously mailed), a Notice of Allowance (PTOL-85) NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT R	is (OR REMAINS) CLOSED in this a or other appropriate communicati RIGHTS. This application is subject and MPEP 1308.	application. If not include on will be mailed in due	led course. <b>THIS</b>		
1. $igotimes$ This communication is responsive to <u>Supplemental Amen</u>	<u>dment, filed 7/10/2007</u> .				
2. ☑ The allowed claim(s) is/are <u>5-13;15-18</u> .					
a) Acknowledgment is made of a claim for foreign priority u a) All b) Some* c) None of the:  1. Certified copies of the priority documents hav 2. Certified copies of the priority documents hav 3. Copies of the certified copies of the priority do International Bureau (PCT Rule 17.2(a)).  * Certified copies not received:  Applicant has THREE MONTHS FROM THE "MAILING DATE" noted below. Failure to timely comply will result in ABANDONI THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.  4. A SUBSTITUTE OATH OR DECLARATION must be subm INFORMAL PATENT APPLICATION (PTO-152) which giv 5. CORRECTED DRAWINGS ( as "replacement sheets") mu (a) including changes required by the Notice of Draftsper 1) hereto or 2) to Paper No./Mail Date Paper No./Mail Date Lidentifying indicia such as the application number (see 37 CFR each sheet. Replacement sheet(s) should be labeled as such in 6. DEPOSIT OF and/or INFORMATION about the depo	re been received. The been received in Application No. The been received in Application No. The been received in the process of this communication to file a report of this application.  The been received in Application to file a report of this application.  The been received in Application to file a report of this application.  The been received in Application to file a report of this application.  The beat of this application to file a report of the application to file a report of the beat of this application.  The been received in Application No.  The beat received in	is national stage applications and the rest of the stage application is deficient.  TO-948) attached a Office action of the stage in the front (not the 21(d).  L must be submitted.	equirements  NOTICE OF		
Attachment(s)  1. ☐ Notice of References Cited (PTO-892)  2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date  4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material	Paper No./Mail 7.	ary (PTO-413), Date ndment/Comment ement of Reasons for Al	Chr		
		GREGORY HUS SUPERVISORY PATENT TECHNOLOGY CEN	EXAMINER		



#### UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

#### **BIB DATA SHEET**

#### **CONFIRMATION NO. 9683**

				1				Y	
SERIAL NUM	BER	FILING OI			CLASS	GROUP ART	UNIT	ATTO	RNEY DOCKET
10/942,32	26	09/16/2	_		239	3751			69281/54
		RUL	E					<u> </u>	
APPLICANT Boguslav	_	ski, Oceansid	le, CA;						
** CONTINUIN	G DAT	A ********	*****	*					
** FOREIGN A	PPLICA	ATIONS *****	******	*****	*				
** <b>IF REQUIRE</b> 11/02/20		REIGN FILING	S LICENS	E GRA	ANTED ** ** SMA	LL ENTITY **			
Foreign Priority claim		Yes No			STATE OR	SHEETS	TOT		INDEPENDENT
35 USC 119(a-d) con Verified and	ditions met	•	Met af Allowa KAM		COUNTRY	DRAWINGS	CLAI	_	CLAIMS
	MAHONE/ Examiner's		Initials		CA	4	17 		3
ADDRESS			·		•	· · · · · · · · · · · · · · · · · · ·		-	
AMSTER 90 PARK NEW YO UNITED	ÁVENI RK, NY	10016	ENSTEIN	LLP					
TITLE						The III		•	***************************************
Squirting	toy								
						☐ All Fe	es		
						☐ 1.16 I	Fees (Fil	ing)	
FILING FEE		Authority has	_		'aper EPOSIT ACCOUI	UT □ 1.17 F	ees (Pr	ocess	ing Ext. of time)
RECEIVED 385		to			EPOSIT ACCOU	1.18 [	ees (Iss	sue)	
						☐ Other			
			•			☐ Credi			

Case 1:08-cv-02909-NRB Document 12-6 Filed 08/20/2008 Page 29 of 40
Application/Control No. Applicant(s)/Patent under

Issue Classification

10/942,326

Reexamination

ORLOWSKI, BOGUSLAW

Examiner

Kristie A. Mahone

Art Unit 3751

	_										
				ISSUE	CL	AS	SIF	<b>ICAT</b>	ION		
		ORIGINAL			I			INT	ERNATIONAL (	CLASSIFICATION	
	CLASS		SUBC	LASS			CI	AIMED		NON-CL	AIMED
	222		79	9	Α	63	н	3	/18		1
	CROS	S REFEREN	ICES		G	01	F	11	/00		,
CLASS	SUBCLA	SS (ONE SL	IBCLASS PE	R BLOCK)		0			700		<u> </u>
222	409				Α	62	С	31	/02		1
239	394								1		1
									1		1
									7		1
									1		1
	ie A. Mah stant Exami			Gregr	ov I	Huse	on 8	/6/07	T	otal Claims Allov	ved: 13
Nic	ole Scrivr struments E	ner 8/6/0	07	(Primary	*		o	(Date)		O.G. Print Claim(s) 5	O.G. Print Fig.

$\boxtimes$	laims	renur	nbere	d in th	e sam	e orde	er as p	oresen	ted by	appli	cant	□c	PA		□т.	D.		☐ R.	1.47
Final	Original		Final	Original		Final	Original		Final	Original		Final	Original		Final	Original		Final	Original
								_										<u> </u>	
								_											
								_											
								-											
								-					-						
L	L <u>.                                    </u>				l			L	1	<u> </u>			l	ļ	<u> </u>		L		لــــــا

	Application/Control No.	Applicant(s)/Patent Under Reexamination
Index of Claims	10942326	ORLOWSKI, BOGUSLAW
	Examiner	Art Unit
	Mahone, Kristie A	3751

>	Rejected
=	Allowed

•	Cancelled
÷	Restricted

Ν	Non-Elected
-	Interference

A	Appeal
0	Objected

Claims	renumbered	I in the same o	order as pro	esented by	applicant		☐ CPA	□ T.I	D. 🗆	R.1.47					
CL	AIM		DATE												
Final	Original	07/30/2007													
	1	-													
	2														
	3	-													
	4	-								_					
	5	=													
	6	=								<u> </u>					
	7	=													
	8	=								<u> </u>					
	9	=						_							
· · · ·	10	=								<u> </u>					
	11	=													
	12	=													
	13	=								<u> </u>					
	14	-													
	15	=													
	16	=													
	17	=								<b></b>					
	18	=													

# Search Notes

Application/Control No.	Applicant(s)/Patent Under Reexamination
10942326	ORLOWSKI, BOGUSLAW
Examiner	Art Unit
Mahone, Kristie A	3751

SEARCHED								
Class	Subclass	Date	Examiner					
222	79,409	7/30/2007	KAM					
446	153,473	7/30/2007	KAM					
482	55,111	7/30/2007	KAM					
92	249	7/30/2007	KAM					

SEARCH NOT	ES	
Search Notes	Date	Examiner
Updated Original Search	7/30/2007	KAM

INTERFERENCE SEARCH						
Class	Subclass	Date	Examiner			
222	79,409	7/30/2007	KAM			
446	153,473	7/30/2007	KAM			
482	55,111	7/30/2007	KAM			
92	249	7/30/2007	KAM			

U.S. Patent and Trademark Office Part of Paper No.: 20070730



#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725790167 US July 10, 2007 Date of Deposit:

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA

Name: Signature:

#### SUPPLEMENTAL AMENDMENT

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Office Action mailed March 30, 2007, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on

page 2 of this paper.

Remarks begin on page 5 of this paper.

#### PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 or Fax (571)-273-2885 INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks I through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block I, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for distributions for patifications. diffaintenance fee notifications Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying CURRENT CORRESPONDENCE ADDRESS (Note: Use Block I for any change of address) papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission. 1912 7590 08/03/2007 Certificate of Mailing or Transmission AMSTER, ROTHSTEIN & EBENSTEIN LLP I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below. 90 PARK AVENUE NEW YORK, NY 10016 (Depositor's name (Signature) (Date) APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/942,326 09/16/2004 Boguslaw Orlowski 69281/54 9683 TITLE OF INVENTION: SQUIRTING TOY ะกป APPLN TYPE SMALL ENTITY ISSUE FEE DUE **PUBLICATION FEE DUE** PREV. PAID ISSUE FEE TOTAL FEE(S) DUE DATE DUE nonprovisional YES \$700 \$300 \$0 \$1000 11/05/2007 EXAMINER ART UNIT CLASS-SUBCLASS MAHONE, KRISTIE ANNETTE 3751 222-079000 1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). 2. For printing on the patent front page, list AMSTER, ROTHSTEIN & (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached. 2 EBENSTEIN (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to Tree Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required. 2 registered patent attorneys or agents. If no name is listed, no name will be printed. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type) PLEASE NOTE: Unless an assignce is identified below, no assignce data will appear on the patent. If an assignce is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment. (A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY) Prime Time Toys, Ltd. Kwun Tong, Hong Kong Misse check the appropriate assignee category or categories (will not be printed on the patent) : 🔲 Individual 🛣 Corporation or other private group entity 🚨 Government The following fee(s) are submitted: 4b. Payment of Fec(s): (Please first reapply any previously paid issue fee shown above) Issue Fee A check is enclosed. 2 Publication Fee (No small entity discount permitted) Payment by credit card. Form PTO-2038 is attached. Advance Order - # of Copies The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 01-1785 (enclose an extra copy of this form). 5. Change in Entity Status (from status indicated above) a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2). NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office. /Michael P. Kenney/ August 14, 2007 Authorized Signature Michael P. Kenney, Esq. Typed or printed name Registration No: 42,718 This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FA

Electronic Patent Application Fee Transmittal						
Application Number:	10	10942326				
Filing Date:	16	16-Sep-2004				
Title of Invention:	SQUIRTING TOY					
First Named Inventor/Applicant Name:	Вс	oguslaw Orlowski				
Filer:	Michael Kenney					
Attorney Docket Number:	69	281/54				
Filed as Small Entity						
Utility Filing Fees						
Description		Fee Code	Quantity	Amount	Sub-Total in USD(\$)	
Basic Filing:						
Pages:						
Claims:						
Miscellaneous-Filing:						
Petition:						
Patent-Appeals-and-Interference:						
Post-Allowance-and-Post-Issuance:						
Utility Appl issue fee		2501	1	700	700	
Publ. Fee- early, voluntary, or normal		1504	1	300	300	

Case 1:08-cv-02909-NRB  Description	Document	12-6 Filed Fee Code	08/20/200 Quantity	8 Page 35 Amount	Of 40 Sub-Total in USD(\$)
Extension-of-Time:					
Miscellaneous:					
		Tota	al in USD	(\$)	1000

Case 1:08-cv-02909-NRB Document 12-6 Filed 08/20/2008 Page 36 of 40  Electronic Acknowledgement Receipt					
EFS ID:	2080582				
Application Number:	10942326				
International Application Number:					
Confirmation Number:	9683				
Title of Invention:	SQUIRTING TOY				
First Named Inventor/Applicant Name:	Boguslaw Orlowski				
Customer Number:	1912				
Filer:	Michael Kenney				
Filer Authorized By:					
Attorney Docket Number:	69281/54				
Receipt Date:	14-AUG-2007				
Filing Date:	16-SEP-2004				
Time Stamp:	15:07:41				
Application Type:	Utility under 35 USC 111(a)				

### Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$1000
RAM confirmation Number	355
Deposit Account	011785

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17

#### File Listing:

Document Number	ase 1:08-cv-02909-NRB Doc Document Description	rument 12-6 Filed 08 File Name	/20/12008 /Message Digest	<sup>37</sup> Mປ່າ <mark>ຕ</mark> ີ Part /.zip	Pages (if appl.)
1	Issue Fee Payment (PTO-85B)	lssue_Fee_Squirting_Toy.pd	160590	no	1
'	issue ree rayment (r ro 65b)	f	d4290b3322ebb58fd42838d8b6ee3ca9 6bbebdcc	110	I
Warnings:					
Information:	:				
2	Fee Worksheet (PTO-06)	fee-info.pdf	8242	no	2
2	Too Workerhoot (1 To ob)		5217179fa530f0dc8fb2290deaffdb039c5 51bf1	110	۷
Warnings:					
Information	•				
		Total Files Size (in bytes):	16	8832	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

#### New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

#### National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

#### New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/08A (04-07)
Approved for use through 09/30/2007. OMB 0551-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Ber the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Complete if Known

ubstitute for form 1449/PTO

Sheet 1

FENT & TRA

### INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many shoots as necessary)

	•	
Application Number	10/942,326	
Filing Date	September 16, 2004	
First Named Inventor	Boguslaw Orlowski	
Art Unit	3751	
Examiner Name	Mahone, Kristie Annette	
Attorney Docket Number	69281/54	

U. S. PATENT DOCUMENTS						
Examiner Initials*	Cite No.	Document Number  Number-Kind Code <sup>2 (f known)</sup>	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	
		US- 4,615,488	10-07-1980	ands		
		4,015,466	10-07-1300			
	Į	US-			<u> </u>	
		US-			·	
		US-				
		US-				
	<del></del>	US-				
		US-				
	<del>                                     </del>	US-				
		US-				
		US-				
		US-				
		US-				
		US-	1			
		US-	1			
		US-	<del>                                     </del>			
		US-	1	1. W		
		US-	1			
		US-	<del>- </del>			
		US-		-		

Examiner Cite Foreign Patent Document		Publication	Name of Patentee or	Pages, Columns, Lines, Where Relevant Passages	Г	
Initials*	No.'	Country Code <sup>3</sup> "Number <sup>4</sup> "Kind Code <sup>8</sup> (if known)	MM-QD-YYYY	Applicant of Cited Document	Or Relevant Figures Appear	T
		Int'l Search Report	95-08-2007			
						L
						┝
						r
						_

Examiner		Date	
Signature		Considered	
0.8	· · · · · · · · · · · · · · · · · · ·		

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. Applicant is to place a check mark here if English language

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

#### United States Patent and Trademark Office

09/26/2007

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO. ISSUE DATE PATENT NO. ATTORNEY DOCKET NO. CONFIRMATION NO.

10/942,326 10/16/2007 7281642 69281/54 9683

AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016

7590

1912

#### **ISSUE NOTIFICATION**

The projected patent number and issue date are specified above.

#### **Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**

(application filed on or after May 29, 2000)

The Patent Term Adjustment is 219 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

Boguslaw Orlowski, Oceanside, CA;

J. Michael McMahon

№ AO 120 (Rev. 3/04)

O

# Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

# REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been ▶ Patents or □ Trademarks: filed in the U.S. District Court Southern District of New York on the following DOCKET NO. DATE FILED U.S. DISTRICT COURT 03/06/2008 08cv2335 S.D.N.Y. DEFENDANT **PLAINTIFF** Prime Time Toys Ltd. Manley Toy Direct LLC, et al DATE OF PATENT PATENT OR HOLDER OF PATENT OR TRADEMARK TRADEMARK NO. OR TRADEMARK Prime Time Toys Ltd. 7281642 10/16/2007 2 2176591 07/28/1998 3 In the above—entitled case, the following patent(s)/ trademark(s) have been included: DATE INCLUDED **INCLUDED BY** ☐ Answer Cross Bill Other Pleading Amendment PATENT OR DATE OF PATENT HOLDER OF PATENT OR TRADEMARK TRADEMARK NO. OR TRADEMARK 3 In the above—entitled case, the following decision has been rendered or judgement issued: DECISION/JUDGEMENT CLERK (BY) DEPUTY CLERK DATE

JEH

3/06/2008

# EXHIBIT C

File Wrapper of 7,281,642 B2

PTO/SB/05 (04-04)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office. U.S. DEPARTMENT OF COMMERCE

	I ITII ITV	Attorney Docket No.	PT-007
D.	UTILITY ATENT APPLICATION		_
[ [	TRANSMITTAL	1	BOGUSLAW ORLOWSKI
		Title	SQUIRTING TOY
(Only for ne	w nonprovisional applications under 37 CFR 1.53(b))	Express Mail Label No.	
	APPLICATION ELEMENTS apter 600 concerning utility patent application contents.	ADDITESS TO.	Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450
(Submit a Applican Applican See 37 (Cores Reference or a core Brief De Detailed Claim(s) - Abstract  4. Drawing(  5. Oath or Declara a. Newly b. Copy (for core) Copy (for cor	d arrangement set forth below) tive title of the invention eleference to Related Applications ent Regarding Fed sponsored R & D ace to sequence listing, a table, aputer program listing appendix bund of the Invention immary of the Invention escription of the Drawings (if filed) to Description to the Disclosure (s) (35 U.S.C. 113) [Total Sheets]  ration [Total Sheets] ration [Total Sheets] y executed (original or copy) from a prior application (37 CFR 1.63(d)) continuation/divisional with Box 18 completed) ELETION OF INVENTOR(S) interest attached deleting inventor(s) me in the prior application, see 37 CFR 63(d)(2) and 1.33(b).  Ittion Data Sheet. See 37 CFR 1.76	7. CD-ROM or CD-R Computer Prograil 8. Nucleotide and/or Amil (if applicable, all necessa. Computer R  b. Specification i. CD-RO  ii. Paper c. Statements  ACCOMPANYI  9. Assignment Pap 10. 37 CFR 3.73(b) (when there is all English Translated Information Discostatement (IDS). 13. Preliminary Ameles Return Receipt Foundation (Should be specified Copy of (if foreign priority) (b)(2)(B)(i). Applior its equivalent. 17. Other: \$\frac{3}{3}\$	R in duplicate, large table or im (Appendix) ino Acid Sequence Submission sary) Readable Form (CRF) In Sequence Listing on:  OM or CD-R (2 copies); or  Everifying identity of above copies ING APPLICATION PARTS  Deers (cover sheet & document(s)) Statement Power of Attorney tion Document (if applicable) Closure Copies of IDS Citations endment Postcard (MPEP 503) Cifically itemized) In Priority Document(s) In Sequest under 35 U.S.C. 122 Copies of IDS Citations endment Request under 35
18. If a CONTINU specification follow	JING APPLICATION, check appropriate box, and supp wing the title, or in an Application Data Sheet under 37	oly the requisite information bo CFR 1.76:	elow and in the first sentence of the
Continua	Official	ion-in-part (CIP) of prior a	application No.:
on, is considered a	N OR DIVISIONAL APPS only; The entire disclosure of the part of the disclosure of the accompanying continuation can only be relied upon when a portion has been inadvert	or divisional application and is ently omitted from the submitte	hereby incorporated by reference
	19. CORRESPOND	ENCE ADDRESS	
Customer	Number: 26250	OR 🗆	Correspondence address below
Name <b>1</b>	FRANK MARIND		
Address	394 MEREDITH NECK	RD	
	MEREDITH	State NH	Zip Code 03253
Country		dephone 603-279-01	
Name (Print/Type)	FRANK MARINO	Registration No. (Attorney/Ag	
Signature	Fm R		Date 9/10/04

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (10-03)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMITTEE

FEE TRANS			omplete if Known
FEE IRANS	WILLIAL	Application Number	
for FY 2	004	Filing Date	HEREWITH
Effective 10/01/2003. Patent fees are subj		First Named Inventor	BOGUSLAW ORLOWSKI
Applicant claims small entity status. So	ee 37 CFR 1.27	Examiner Name	
TOTAL AMOUNT OF PAYMENT	(\$) 385	Art Unit Attorney Docket No.	PT-007

METHOD OF PAYMENT (check all that apply)	FEE CALCULATION (continued)					
Check Credit card Money Other None	3. A	DDIT	ONAL	L FEE	S	
Order D	<u>Large</u>	Entity	Small	Entity	,	
Deposit Account:	Fee			Fee	Fee Description	
Deposit Account	Code		Code		•	Fee Paid
Number Deposit	1051	130	2051		Surcharge - late filing fee or oath	
Account	1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
Name Land I had apply) The Director is authorized to: (check all that apply)	1053	130	1053	130	Non-English specification	
Charge fee(s) indicated below Credit any overpayments	1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
Charge any additional fee(s) or any underpayment of fee(s)	1804	920*	1804	920*	Requesting publication of SIR prior to	
Charge fee(s) indicated below, except for the filing fee	1805	1,840*	1905	1 0/0*	Examiner action  Requesting publication of SIR after	
to the above-identified deposit account.	1603	1,040	1005	1,040	Examiner action	
FEE CALCULATION	1251	110	2251	55	Extension for reply within first month	
1. BASIC FILING FEE	1252	420	2252	210	Extension for reply within second month	
Large Entity Small Entity	1253	950	2253	475	Extension for reply within third month	
Fee Fee Fee Fee Pee Pee Pee Paid Code (\$) Code (\$)	1254	1,480	2254	740	Extension for reply within fourth month	
1001 770 2001 385 Litility filing fee	1255	2,010	2255	1,005	Extension for reply within fifth month	ļ
1002 340 2002 170 Design filing fee	1401	330	2401	165	Notice of Appeal	
1003 530 2003 265 Plant filing fee	1402	330	2402	165	Filing a brief in support of an appeal	
1004 770 2004 385 Reissue filing fee	1403	290	2403	145	Request for oral hearing	
1005 160 2005 80 Provisional filing fee	1451	1,510	1451	1,510	Petition to institute a public use proceeding	
SUBTOTAL (1) (\$) 385	1452	110	2452	55	Petition to revive - unavoidable	
	1453	1,330	2453	665	Petition to revive - unintentional	
2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE	1501	1,330	2501	665	Utility issue fee (or reissue)	
Extra Claims below Fee Paid	1502	480	2502	240	Design issue fee	
Total Claims 17 -20** = 9 X = 9	1503	640	2503	320	Plant issue fee	
Claims	1460	130	1460	130	Petitions to the Commissioner	
Multiple Dependent	1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
Large Entity   Small Entity  Fee Fee   Fee Fee Fee Description	1806	180	1806	180	Submission of Information Disclosure Stmt	
Fee Fee Fee Fee Fee Description  Code (\$)	8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1202 18 2202 9 Claims in excess of 20	1809	770	2809	385	Filing a submission after final rejection	
1201 86 2201 43 Independent claims in excess of 3 1203 290 2203 145 Multiple dependent claim, if not paid					(37 ČFR 1.129(a))	
1203 290 2203 145 Multiple dependent claim, if not paid 1204 86 2204 43 ** Reissue independent claims	1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
over original patent	1801	770	2801	385	Request for Continued Examination (RCE)	
1205 18 2205 9 ** Reissue claims in excess of 20 and over original patent	1802	900	1802	900	Request for expedited examination of a design application	
SUBTOTAL (2) (\$)	Other	fee (sp	ecify) _			
**or number previously paid, if greater; For Reissues, see above	*Redu	ced by	Basic F	Filing Fe	ee Paid SUBTOTAL (3) (\$)	

SUBMITTED BY				(Complete	e (if applicable))
Name (Print/Type)	FRANK MARINO	Registration No. (Attorney/Agent)	37879	Telephone	603-279-0159
Signature	Toh-		-	Date	9-10-04

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Wiener of User 1.5. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FOR 2015 ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

PTO/SB/92 (08-03) Approved for use through 07/31/2006. OMB 0561-0031 Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

# Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

> Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

RANK MARIND

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

- LETTERS PATENT APPL FOR "SQUIRTING TOY" INCLUDING SPECIFICATION (9 PAGES) AND DRAWINGS (4 SHEETS)

DECLARATION OF AND POWER OF ATTORNEY BY INVENTOR BOGUSLAW ORLOWSKI FOR ABOVE APPL.

SMALL ENTITY FILING FEE FOR ABOVE

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Docket PT-007 Date 08/01/04

Application for United States Letters Patent

For:

**Squirting Toy** 

Invented By:

Boguslaw Orlowski

#### FIELD OF THE INVENTION:

The present invention is a water squirting apparatus for use at play. More specifically, it is a soft floating tubular piston type squirt gun for use such as in a swimming pool or swimming area by participants in or adjacent to the water.

# BACKGROUND AND OBJECTS OF THE INVENTION:

Squirt guns are well known in many forms in the prior art. Numerous squirt guns and squirting toys are made and have been made over the years for use by persons while swimming in or standing adjacent to a swimming pool, which are adapted to quickly take in water from the swimming pool for squirting. One such toy is called Water Stix<sup>TM</sup> and is sold by Hearthsong Inc. This toy, representative of many such squirting toys, is basically comprised of a housing having a nozzle at its squirting end. A piston, which includes a graspable handle, is adapted to slide within the housing so that, when the nozzle end of the housing is submerged in the pool and the piston is pulled backwards, water is drawn into the housing through the nozzle. And when the piston is subsequently forced forwardly, that water is forced from the housing, through the nozzle, towards a target, in a powerful stream.

Additionally, many squirt guns of the prior art are constructed in a manner that entraps air and thereby inadvertently enables those guns to partially float in water. The degree of such buoyancy is relative to the amount of water that has been taken into the gun and the longevity of such buoyancy is relative to the to the amount of air leakage from the housing.

There are also floating toy "swimming noodles" in the prior art, which are made of resilient floating closed-cell polymer foam. These toys are used to provide buoyancy to the user while swimming. Because these toys are often left floating in the pool when not in use, their softness eliminates the safety threat that they would otherwise pose.

It is therefore an object of the present invention to provide an improved squirting toy that floats fully atop the surface of the water, whether filled with or empty of water.

It is a further object to provide a soft squirting toy that is safer that squirting toys of the prior art.

It is a further object to provide a squirting toy that is both buoyant and soft.

It is a further object to provide such a squirting toy that has a similar appearance to a "swimming noodle".

Further objects and advantages of the invention will be apparent upon a review of the following description and drawings of the invention, including the preferred embodiment thereof.

#### SUMMARY OF THE INVENTION:

The present invention comprises a squirting toy that is housed within a polyethylene (PE) closed cell foam shell. The closed cell shell is non-absorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool. In the preferred embodiment, the squirting toy is comprised of a cylindrical housing and a piston that slides within to force water into or out of the housing via a hole therein. The foam shell

of the preferred embodiment is similar in size and shape to a "swimming noodle", and is therefore more attractive to a child who is familiar with such.

A more complete understanding of the invention will be realized upon review of the following description and drawings of the Preferred embodiment of the invention.

#### BRIEF DECRIPTION OF THE DRAWINGS:

Figure 1 is an action view of a squirting toy according to the preferred embodiment of the invention showing water being expelled there-from.

Figure 2 is a cross-sectional view through the toy of Figure 1 in its retracted/empty state.

Figure 3 is an enlarged partial section of the toy of Figure 1 floating in water,

Figure 4 is an action cross-sectional view in showing the intake of water into the toy of Figure 1, and

Figure 5 is an action cross-sectional view in showing the expulsion of water from the toy of Figure 1.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT:

The Preferred embodiment of the invention is shown in Figures 1 though 5, where there is depicted a toy 100 for squirting a water stream 102, and which is adapted to float on the water surface 104.

The toy comprises a rigid tubular housing 106 that encloses a hollow cylindrical chamber 110. The forward end 112 of the tubular housing is closed except for a small hole 114. Piston 116 slides longitudinally within chamber 110 and is sealed against the

cylindrical inner surface 120 of the chamber by o-ring 122, which is seated within groove 124 of the piston. The piston separates the chamber 110 into a forward portion 110A and a rear portion 110B. The piston 116 is rigidly connected to shaft 124 at the forward end 126 thereof. Slide bushing 128 supports shaft 124 at the rear end 130 of the tubular housing 106, while allowing longitudinal movement relative thereto. Handle portion 132 is rigidly connected to shaft 124 at the rearward end 134 thereof. Expansion of the handle portion 132 relative to the tubular housing 106, while hole 114 is below the water surface 104, as depicted in Figure 4, causes water to be inhaled into the expanding forward chamber portion 110A, through hole 114. Subsequent retraction of the handle portion 132 relative to the tubular housing 106 causes that water to be exhaled through hole 114 in a powerful stream 102.

Tubular shell 138, preferably made of closed-cell polyethylene foam, surrounds tubular housing 106, to provide both a soft protective surface and buoyancy. Other materials may be substituted for polyethylene foam, such as ethylene vinyl acetate closed-cell foam.

Handle portion 132 also includes handle shell 140, which is preferable made of the same foam, and is rigidly connected shaft 124 by means of support bushings 144 and 146. Alternatively, other materials having sufficient buoyancy, softness, and water impermeability, such as polyurethane foam, may be used for both the tubular and handle shells. Or the shells could instead be replaced by blow molded or rotationally molded air-filled cylindrical bladders. When the handle portion is retracts as in Figure 2, the shells create a similar appearance and feel to those of a common "swimming noodle".

It will be appreciated by those skilled in the applicable arts that the foregoing is merely one of many possible embodiments of the invention, and that the invention should therefore only be limited according to the following claims.

# I CLAIM:

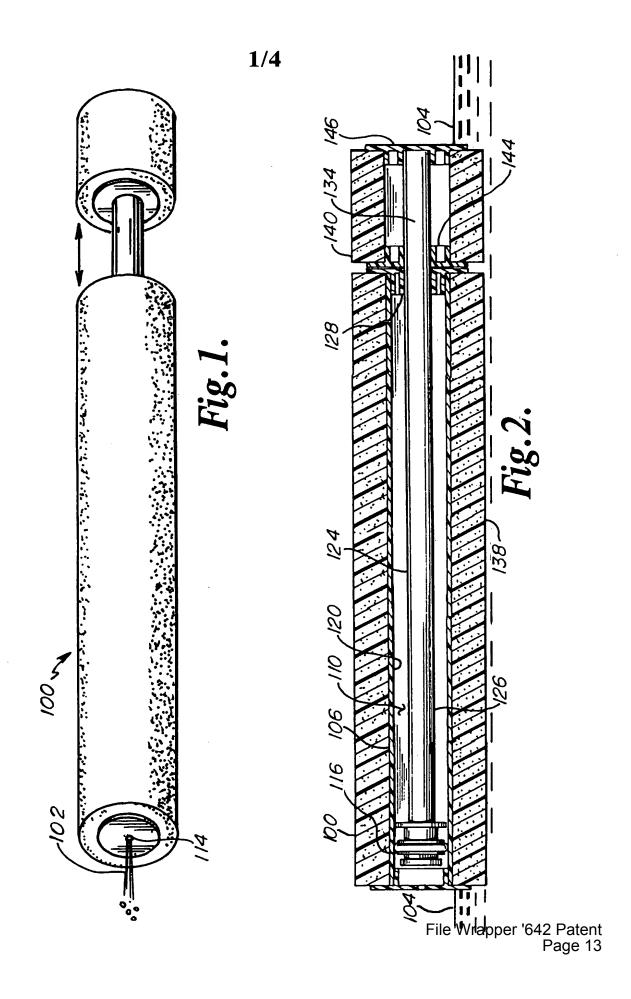
- An encasement for a partially hollow squirting toy comprised of a soft material
  that has buoyancy sufficient to keep the toy afloat in water when the toy is filled
  to its maximum capacity with water.
- 2. The encasement of Claim 1 wherein said soft material is closed-cell polymer foam.
- 3. The encasement of Claim 1 wherein said material is closed-cell polyethylene foam.
- 4. The encasement of Claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.
- 5. A toy for receiving, storing, and squirting water and encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water.
- 6. The toy of Claim 5 wherein said soft material is closed-cell polymer foam.
- 7. The toy of Claim 1 wherein said material is closed-cell polyethylene foam.
- 8. The toy of Claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.
- 9. A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water

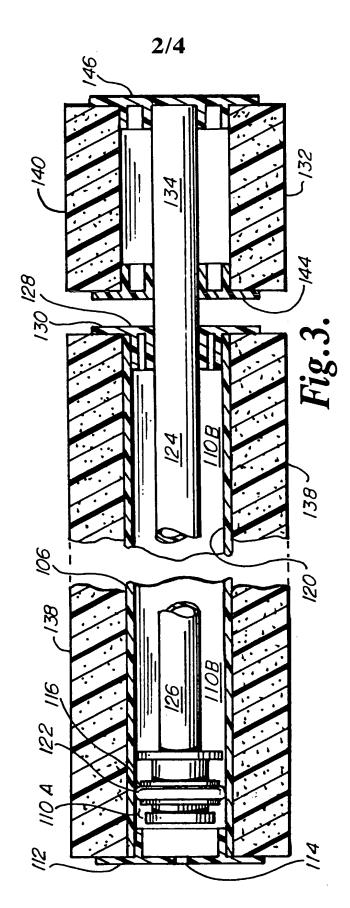
through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water.

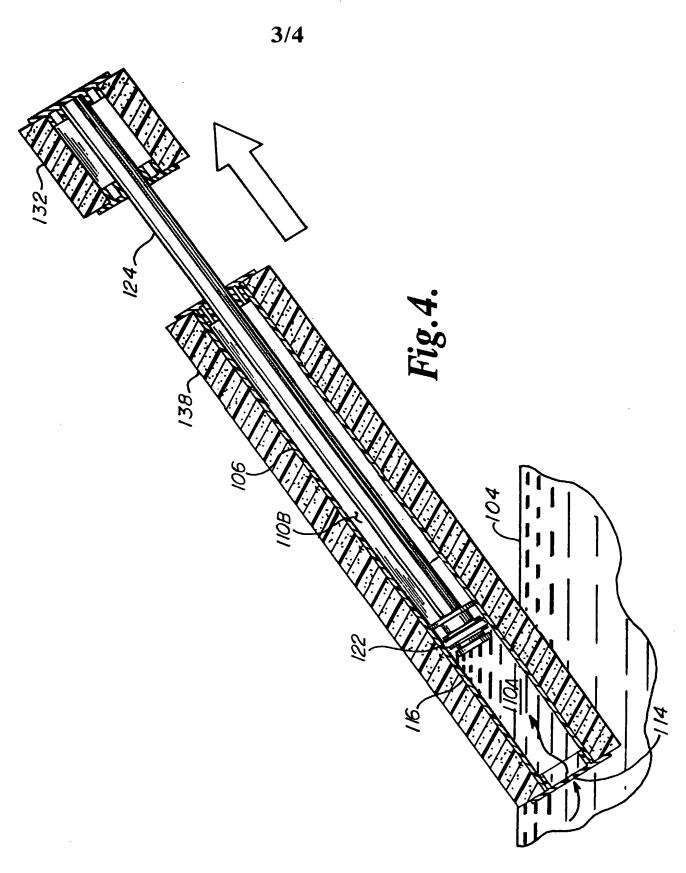
- 10. The toy of Claim 9 wherein said soft material is closed-cell polymer foam.
- 11. The toy of Claim 9 wherein said material is closed-cell polyethylene foam.
- 12. The toy of Claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. The toy of Claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. The toy of Claim 13 wherein said outer shell is cylindrically shaped.
- 15. The toy of Claim 14 wherein said soft material is closed-cell polymer foam.
- 16. The toy of Claim 14 wherein said material is closed-cell polyethylene foam.
- 17. The toy of Claim 14 wherein said material is closed-cell ethylene vinyl acetate foam.

#### ABSTRACT:

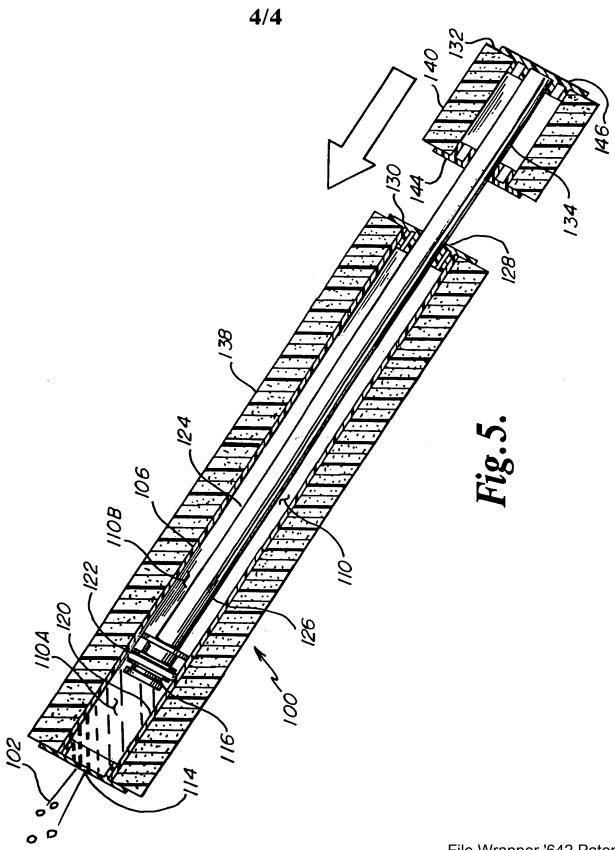
A squirting toy is comprised of a cylindrical housing and a piston that slides within to force water into or out of the housing via a hole therein. The housing is encased within a polyethylene closed cell foam shell. The shell is non-absorbing, so that the foam remains buoyant and keeps the gun afloat indefinitely when left in water. The foam is soft, so that the gun is not a safety hazard when left floating in a swimming pool.







File Wrapper '642 Patent Page 15



File Wrapper '642 Patent Page 16

PTO/SB/01 (05-03) Approved for use through 04/30/2003. OMB 0651-0032

[Page 1 of 2]

Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

This collection of information is required by 37 CFR 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/01 (05-03)

Approved for use through 04/30/2003. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

# **DECLARATION** — Utility or Design Patent Application

Direct all correspondence to:	Customer or Bar Co	Number 26 de Label	250	OR _	Corres	pondence address below
Name FRANK M	ARINO	>				
Address	~ ~ . ~ .	1 NECK	70 1			
394 MER	E DITI-	NECK		) 		
City MEREDITI	-1		State	JH		<sup>ZIP</sup> 03253
Country USA		Telephone 603-279	-0159	Fax 603	-2	79-0159
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.						
NAME OF SOLE OR FIRST IN	VENTOR:		etition has b	een filed for th	is unsigi	ned inventor
Given Name (first and middle [if any]) $\mathcal{B}_{\ell}$	DG-USL	-AW		Family Name or Surname	OR C	COUSKI
		House				Date   08   08   2004
	State CACIF	ORKUA	Country /	· A	Citize	
Mailing Address 705 SHAD						
OCEANSIDE	State CAU	FORNI!	) ZIP	205	4	Country U·S·A
NAME OF SECOND INVENTO	R:			petition has be	en filed t	or this unsigned inventor
Given Name (first and middle [if any])				amily Name or Surname		
Inventor's Signature			······································			Date
Residence: City	State		Country		Citize	nship.
Mailing Address					<b>1</b>	
City	State		ZIP		Count	ny .
Additional inventors or a legal rep	presentative are bein	ng named on the s	upplemental st	eet(s) PTO/SB/02/	or O2LR	ettached hereto.

PTO/SB/81 (05-03)

Approved for use through 11/30/2005. OMB 0651-0035 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are rec	juired to respond to a collection of info	rmation unless it displays a valid OMB control number.
	Application Number	
	Filing Date	HEREWITH
POWER OF ATTORNEY OR	First Named Inventor	BOGUSLAW ORLOWSKI
AUTHORIZATION OF AGENT	Title	SQUIRTING TOY
AUTHORIZATION OF AGENT	Art Unit	
	Examiner Name	
	Attorney Docket Number	PT-007

I basely consists				
I hereby appoint:			Г	
Practitioners at Customer	Number 26250		▶	Place Customer Number Bar Code Label here
Practitioner(s) named be	low:		<b>L</b> _	
_	Name		Registration N	imher
FRANK M	ARINO	378	79	
		·· · · · · · · · · · · · · · · · · · ·		
as my/our attorney(s) or agent(s) Trademark Office connected the	s) to prosecute the application identified erewith.	above, and to tra	insact all business in	the United States Patent and
	nce address for the above-identified ap	olication to:	***************	
	• •	Siloation to.		-
The above-mentioned Cu	istomer Number.		_	
OR				
Practitioners at Custome	Number.	l	<b></b>	Place Customer Number Bar Code
<del></del>	<u> </u>		1	Label here
OR			<u> </u>	
Firm or Individual Name	FRANK MAR	120		
Address	394 MERED	TH NE	CK RD	
Address			7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	
		State		<del></del>
City	MEREDITH	State	NH	Zip 03253
City Country	MEREDITH USA	State	NH	Zip   03253
	USA	Fax	603-Z	1 10363 3
Country	USA			1 10363 3
Country Telephone	USA			1 10363 3
Country Telephone I am the: Applicant/Inventor.	USA 603-279-0159			1 10363 3
Country Telephone I am the: Applicant/Inventor. Assignee of record of the	USA	Fax		1 10363 3
Country Telephone I am the: Applicant/Inventor. Assignee of record of the	USA 603 -279 - 0159 the entire interest. See 37 CFR 3.71.	Fax 96).	603-z	1 10363 3
Country Telephone I am the: Applicant/Inventor. Assignee of record of the	USA 603 -279 - 0159  the entire interest. See 37 CFR 3.71. FR 3.73(b) is enclosed. (Form PTO/SB/)  SIGNATURE of Applican	Fax 96).	603-z	1 10363 3
Country Telephone  I am the: Applicant/Inventor. Assignee of record of in Statement under 37 Country  Name BOGU	USA 603 -279 - 0159  the entire interest. See 37 CFR 3.71. FR 3.73(b) is enclosed. (Form PTO/SB/)  SIGNATURE of Applican	Fax 96).	603-z	1 10363 3
Country Telephone  I am the: Applicant/Inventor. Assignee of record of in Statement under 37 Country  Name BOGU	He entire interest. See 37 CFR 3.71. FR 3.73(b) is enclosed. (Form PTO/SB/) SIGNATURE of Applican	Fax 96).	603-Z	1 10363 3
Country Telephone  I am the: Applicant/Inventor.  Assignee of record of the Statement under 37 Country  Name BOGU Signature BOGU Date O8-04	the entire interest. See 37 CFR 3.71. FR 3.73(b) is enclosed. (Form PTO/SB/I SIGNATURE of Applicant ORLOWS SAOW OLOWSKI	Fax  96).  t or Assignee of	603-2	79-0159 79-0159 760]439-3041

This collection of information is required by 37 CFR 1.31 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT	APPLICATION	SERIAL	NO.	

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE FEE RECORD SHEET

09/20/2004 EHAILE1 00000002 10942326

01 FC:2001

385.00 OP

PTO-1556 (5/87)

# PATENT APPLICATION FEE DETERMINATION RECORD

Application or Docket Number

10942226

		Effe	ctive Octo	ber 1, 20	003			101	92	5 20	
	·	CLAIMS A	S FILED (Colum			umn 2)	SMALI TYPE	ENTITY	OF		R THAN ENTITY
T	OTAL CLAIMS	S .	177				RATI	FE		RATE	FEE
F	OR .		NUMBER	R FILED	NUM	BER EXTRA	BASIC	EE 385.	00 OF	BASIC FE	770.00
T	OTAL CHARGE	ABLE CLAIMS	/7 m	inus 20≈	•		XS 9	_	OF	XS18=	
IN	DEPENDENT C	CLAIMS	. 2 п	3 minus 3 =		X43=		OR	You	1	
М	JLTIPLE DEPE	PRESENT		·			<del></del>			<del>                                     </del>	
•  :	the difference	e in column 1 is	less than z	ero, enter	"0" in (	column 2	+145:		OR	<u> </u>	
		CLAIMS AS A					TOTA	1 38	OR	TOTAL	THAN
		(Column 1)		(Colum		(Column 3)	SMAL	L ENTITY	OR	SMALL	
AMENDMENT A		CLAIMS REMAINING AFTER AMENDMENT		HIGHE NUME PREVIO PAID F	BER	PRESENT EXTRA	RATE	ADDI TIONA FEE		RATE	ADDI- TIONAL FEE
N Q N	Total	*	Minus	**		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***		=	X43=		OR	X86=	
	FIRST PRESE	ENTATION OF M	ULTIPLE DE	PENDENT	CLAIM		+145=		OR	+290=	
				-			TOTA			TOTAL	,
•		(Column 1)		(Colum	ın 2)	(Column 3)	ADDIT. FE	Ē <b>L</b>		ADDIT. FEE	
AMENDMENT B		CLAIMS REMAINING AFTER AMENDMENT		HIGHE NUMB PREVIOI PAID F	ST ER USLY	PRESENT EXTRA	RATE	ADDI- TIONA FEE		RATE	ADDI- TIONAL FEE
NON	Total	•	Minus	••		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***		=	X43=	•	OR	X86=	
	FIRST PRESE	NTATION OF ML	JETIPLE DEF	PENDENT	CLAIM		+145=		OR	+290=	
							TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	•
		(Column 1)		(Colum	n 2)	(Column 3)	20011.766			DOM: 1 LL	
AMENDMENT C		CLAIMS REMAINING AFTER AMENDMENT		HIGHE NUMBE PREVIOL PAID FO	ER JSLY	PRESENT EXTRA	RATE	ADDI- TIONAL FEE		RATE	ADDI- TIONAL FEE
	Total ·	•	Minus	**		=	X\$ 9=		OR	X\$18=	
AME	Independent	•	Minus	***	_	=	X43=	1	OR	X86=	·
	FIRST PRESE	NTATION OF MU	ILTIPLE DEF	PENDENT (	CLAIM		145-	1	1 1	1200-	
• #	the entry in colum	nn 1 is less than the	e entry in colui	mn 2, write "(	)" in colu	ımn 3.	+145=		OR	+290= TOTAL	<u> </u>
·H	the *Highest Nur	nber Previously Par nber Previously Pa	id For IN THIS	S SPACE is I	ess than	.3, enter *3.*	ADDIT. FEE	<u> </u>	_	DDIT. FEE L	<del>,</del>
T	ne "Highest Num	ber Previously Paid	For (Total or	Independent	t) is the l	highest number fo	ound in the ap Fi	propriate b	per 6	<b>m 1</b> 42 Pater	nt '



(Dacument 10% Filed 08/20/2008 Page 24 of 57 1 TV

New Attorney Dkt. No. 69281/54 Old Attorney Dkt. No. PT-007

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

Applicant

: Boguslaw Orlowski

Filed

: September 16, 2004

For:

à

ø

: SQUIRTING TOY

TC/A.U.

: 3752

Examiner

: TBD

Customer No.

: 1912

"Express Mail" mailing label No. EL 996368350 US

Date of Deposit: August 31, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the

Commissioner for Patents, P.O. Box 1450, Alexandria,

VA 22313-1450.

Name: Vivian Signature:

# SUBMISSION OF INFORMATION DISCLOSURE STATEMENT AND REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22323-1450

Sir:

Applicant respectfully requests, pursuant to 37 C.F.R. §§§ 1.56, 1.97 and 1.98, that the references listed on the attached PTO/SB/08A Form (Substitute Form for PTO-1449) be considered and cited in the examination of the aboveidentified patent application.

We also enclose a Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address for the above-identified application.

No fee is deemed necessary in connection with the filing of this Information Disclosure Statement. However, if any fee is required to preserve the

New Attorney Dkt. No. 69281/54 Old Attorney Dkt. No. PT-007

pendency of the application, authorization is hereby given to charge the amount of any such fee to deposit Account No. 01-1785.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant(s) 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

•

ţ

Ý

August 31, 2005

Benjamin M. Halpern

Registration No.: 46,494

29 140 CV-02909-NRB

Sheet 1

PTO/SB/08A (08-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Page 26 of 57

Substitute for form 1449/PTO

Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Complete if Known

# INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Coi	Complete if Known				
Application Number	10/942,326				
Filing Date	September 16,2004				
First Named Inventor	Boguslaw Orlowski				
Art Unit	3752				
Examiner Name	Unknown				
Attorney Docket Number	69281/54	フ			

			U. S. PATENT	T DOCUMENTS	
Examiner Initials*	Cite No.1	Document Number  Number-Kind Code <sup>2 (# known)</sup>	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 213,050	03/11/1879	P.C. Lewis	
		<sup>US-</sup> 1,031,526	07/02/1912	N.H. Cloud, Jr.	
		<sup>US-</sup> 1,394,456	10/18/1921	J. Wanat	
		<sup>US-</sup> 2,573,375	10/30/1951	T.W. Winstead	
		<sup>US-</sup> 4,597,527	07/01/1986	Sands	
		<sup>US-</sup> 4,627,796	12/09/1986	Moore	"
		<sup>US-</sup> 5,009,413	04/23/1991	Allen	
		<sup>US-</sup> 5,199,114	04/06/1993	Christopher	
		<sup>US-</sup> 5,928,053	07/27,1999	Henderson	
		<sup>US-</sup> 5,992,697	11/30/1999	James	
		<sup>US-</sup> Des. 26,839	03/30/1897	J. Lines	
		<sup>US-</sup> Des. 240,130	06/01/1976	William A. Folke	
		US-			
-		US-			
		US-			

FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No.1		Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear		
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)	MM-DD-YYYY			T <sup>c</sup>	

Examiner	Date	
Signature	Conside	red

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. Applicant is to place a check mark here if English language Translation is attached.

Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND

TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

AUG 3 1 2005

PA TRADEMA

PTO/SB/82 (09-03)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control numb

# REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

<u>pond to a collection of information unless</u>	it displays a valid Olvib control number.
Application Number	10/942,326
Filing Date	September 16, 2004
First Named Inventor	Boguslaw Orlowski
Art Unit	3752
Examiner Name	
Attorney Docket Number	69281/54 (old no. PT-007)

I hereby revoke all previous powers of attorney given in the above-identified application.							
A Power of Attorney is submitted herewith.							
OR  I hereby appoint the practitioners associated with the Customer Number:  1912							
Please change the correspondence address for the above-identified application to:  The address associated with Customer Number:  1912  OR							
Firm or Individual Name							
Address							
Address							
City	State	Zip					
Country							
Telephone	Fax						
I am the:  Applicant/Inventor.  Assignee of record of the entire interest. See 37 CFR 3.71.  Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)							
SIGNATURE of Applicant or Assignee of Record							
Name Boguslaw Orlowski							
Signature Book	Signature Boranslaw Orlowshi						
Date 08.2	5 · 2005 Telephone						
NOTE: Signatures of all the inventors signature is required, see below*.	or assignees of record of the entire interest or their representative(s) are requ	uired. Submit multiple forms if more than one					
*Total of 1 form	s are submitted.						

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

Date of Deposit: February 17, 2006

indicated above and is addressed to the

VA 22313-1450.

Name: Vivian Campbell

Signature:

"Express Mail" mailing label No. EV 725788849 US

'Express Mail" service under 37 CFR 1.10 on the date

Commissioner for Patents, P.O. Box 1450, Alexandria,

I hereby certify that this paper or fee is being deposited with the United States Postal Service

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3752

Examiner

: TBD

Docket No.

: 69281/54 (old Docket No. PT-007)

Customer No.

: 1912 (old Customer No. 26250)

**STATUS INQUIRY** 

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Applicant respectfully inquires as to the status of the above-identified application. The last correspondence receive from the U.S. Patent Office was a postcard confirming receipt of a submission of an Information Disclosure Statement and a Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address dated August 31, 2005. To date, we have not received any further correspondence.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York February 17, 2006

Benjamin M. Halpern, Reg. No. 46,494

Page 1 of 1



1912

#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NUMBER

FILING OR 371 (c) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

10/942,326

90 PARK AVENUE NEW YORK, NY 10016

AMSTER, ROTHSTEIN & EBENSTEIN LLP

09/16/2004

Boguslaw Orlowski

69281/54

**CONFIRMATION NO. 9683** 



\*OC00000019081986\*

Date Mailed: 06/02/2006

#### NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2005.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

LYNN LAM

PTOSS (703) 308-9150

**OFFICE COPY** 



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION NUMBER FILING OR 371 (e) DATE FIRST NAMED APPLICANT ATTY. DOCKET NO./TITLE

10/942,326 09/16/2004 Boguslaw Orlowski PT- 007

**CONFIRMATION NO. 9683** 

\*OC000000019081947\*

26250 FRANCIS EDWARD MARINO 394 MEREDITH NECK ROAD MEREDITH, NH 03253

Date Mailed: 06/02/2006

#### NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2005.

• The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

LYNN LAM

PTOSS (703) 308-9150

**OFFICE COPY** 

# **EAST Search History**

Ref	l libr	Soarch Quant	DDc	D-611	DI :	
# 	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	0	(222/079).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 08:24
L2	0	"222"".""079".ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:25
L3	0	"222"".""079".ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:25
L4	0	222/079.ccls.	US-PGPUB; USPAT	OR	ON	2006/09/18 08:26
L5	0	(222/079).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 08:26
L6	337	(222/79).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:15
L7	123376	float	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
L8	2989	squirt	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
Ľ9	991250	tube	US-PGPUB; USPAT	OR	ON	2006/09/18 08:27
L10	4	6 and 7 and 8 and 9	US-PGPUB; USPAT	OR	ON	2006/09/18 08:32
L11	498814	polyethylene	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L12	246302	foam	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L13	3534	7 and 11 and 12	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L14	14	8 and 9 and 13	US-PGPUB; USPAT	OR	ON	2006/09/18 08:33
L15	217	(482/55).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:15
L16	256	(482/111).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:21
L17	16	6 and pool	US-PGPUB; USPAT	OR	ON	2006/09/18 09:57
L18	301	(92/249).CCLS.	US-PGPUB; USPAT	OR	OFF	2006/09/18 09:57
L19	0	6 and 18	US-PGPUB; USPAT	OR	ON	2006/09/18 09:58
L20	1	pool and 18	US-PGPUB; USPAT	OR	ON	2006/09/18 09:58
S1	0	("45238995670747").PN.	USPAT	OR	OFF	2006/08/29 10:12
S2	1	("4523899").PN.	USPAT	OR Eil	QFF	2004/08/13 08:51 per 642 Patent

9/18/06 10:27:42 AM

C:\Documents and Settings\ghuson\My Documents\EAST\workspaces\us0620482.wsp



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683
1912	7590 09/27/2006		EXAM	INER
•	ROTHSTEIN & EBENST	TEIN LLP	HUSON, GE	REGORY L
90 PARK A' NEW YORK	VENUE C. NY 10016		ART UNIT	PAPER NUMBER
	-,		3764	•
			DATE MAILED: 09/27/200	6

Please find below and/or attached an Office communication concerning this application or proceeding.

Case 1:08-cv-02909-NRB Docur	ment 12-7	Filed 08/20/2008	Page 33 of 57
	Applicatio	n No.	Applicant(s)
Office Action Comments	10/942,320		ORLOWSKI, BOGUSLAW
Office Action Summary	Examiner		Art Unit
	Gregory L.		3764
The MAILING DATE of this communication a Period for Reply	appears on the	cover sheet with the c	orrespondence address -
A SHORTENED STATUTORY PERIOD FOR REI WHICHEVER IS LONGER, FROM THE MAILING - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication If NO period for reply is specified above, the maximum statutory per - Failure to reply within the set or extended period for reply will, by state Any reply received by the Office later than three months after the material patent term adjustment. See 37 CFR 1.704(b).	DATE OF TH 1.136(a). In no ever od will apply and will tute, cause the appli	S COMMUNICATION  th, however, may a reply be time  expire SIX (6) MONTHS from the cation to become ABANDONEI	L. ely filed the mailing date of this communication. O (35 U.S.C. § 133).
Status			
1) Responsive to communication(s) filed on 17	' February 200	6 ·	
	his action is no		
3) Since this application is in condition for allow			secution as to the merits is
closed in accordance with the practice unde	•	•	
Disposition of Claims		•	
4)⊠ Claim(s) <u>1-17</u> is/are pending in the applicati	on.		
4a) Of the above claim(s) is/are without		sideration.	
5) Claim(s) is/are allowed.			
6)⊠ Claim(s) <u>1-17</u> is/are rejected.			
7) Claim(s) is/are objected to.			
8) Claim(s) are subject to restriction and	d/or election re	guirement.	
		•	•
Application Papers			
9) The specification is objected to by the Exam		¬	
10) The drawing(s) filed on is/are: a) a	•	•	
Applicant may not request that any objection to		•	* *
Replacement drawing sheet(s) including the con	•	• • • •	, ,
11) The oath or declaration is objected to by the	Examiner. No	te the attached Office	Action or form P1O-152.
Priority under 35 U.S.C. § 119			
12) Acknowledgment is made of a claim for fore	ign priority und	er 35 U.S.C. § 119(a)	-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:		•	
1. Certified copies of the priority docume	ents have beer	received.	
2. Certified copies of the priority docume	ents have beer	received in Application	on No
3. Copies of the certified copies of the p	riority docume	nts have been receive	ed in this National Stage
application from the International Bur	eau (PCT Rule	17.2(a)).	
* See the attached detailed Office action for a	list of the certif	ed copies not receive	d.
Attachment(s)			•
1) Notice of References Cited (PTO-892)		4) Interview Summary	(PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)		Paper No(s)/Mail Da	ite
3) Information Disclosure Statement(s) (PTO/SB/08)		5) Notice of Informal P	atent Application .
Paper No(s)/Mail Date <u>8/31/05</u> .  U.S. Patent and Trademark Office		6) Other:File '	Wrapper '642 Patent
	Action Summar	y Pa	rt of Paper No./Mail Date 20060918

Application/Control Number: 10/942,326 Page 2

Art Unit: 3764

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 3. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Henderson as taught by Tagar et al..

Sands shows a similar squirt toy that utilizes a piston in a reciprocating motion to load and discharge water (see the drawing figures and col. 2 lines 14-22).

Sands fails to show the toy encased in foam (of a particular type) to provide buoyancy when the device is used in a pool.

Henderson shows a water toy for use in a pool that provides buoyancy at 20 by means of encasing the tubular toy in 'foam rubber, cork, Styrofoam or the like' for safety (easy to grasp) and buoyancy (to enable it to float to the surface if dropped).

Tagar et al. teach providing buoyancy (through 22) to a similar water squirt toy (fig. 7 and col. 5 lines 19-23) in a pool environment.

Page 3

Application/Control Number: 10/942,326

one of ordinary skill in the art.

Art Unit: 3764

Thus, it would have been obvious to one of ordinary skill in the art to have provided the Sands' toy with an outer casing of foam or the like as shown by Henderson to provide increased safety and buoyancy in a pool environment as taught by Tagar et al. The particular foam or buoyant material chosen is a function of the size and weight of the device, and the cost of manufacture, as suggested by Henderson and also by applicant's use of multiple materials, and thus represents an obvious design choice to

- 4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thorne shows it is known to use a closed cell polyethylene foam for buoyancy on an aquatic exercise device.
- 5. Any inquiry concerning this communication should be directed to Gregory L. Huson at telephone number 571-272-4887.

Gregory L. Huson

**Supervisory Patent Examiner** 

Art Unit 3764

Sheet 1

PTO/SB/08A (08-03) Approved for use through 07/31/2006. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

uction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. Substitute for form 1449/PTO

## INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete if Known					
Application Number	10/942,326				
Filing Date	September 16,2004				
First Named Inventor	Boguslaw Orlowski				
Art Unit	3752				
Examiner Name	Unknown				
Attorney Docket Number	69281/54				

Examiner Initials*	Cite	Document Number	Publication Date	Name of Patentee or	Pages, Columns, Lines, Where
	No.1	No. 1 MM-DD-YYYY Number-Kind Code <sup>2 (# known)</sup>	Applicant of Cited Document	Relevant Passages or Relevant Figures Appear	
GH	V	<sup>US-</sup> 213,050	03/11/1879	P.C. Lewis	
GH_	1/.	<sup>US-</sup> 1,031,526	07/02/1912	N.H. Cloud, Jr.	
GH	V.	<sup>US-</sup> 1,394,456	10/18/1921	J. Wanat	
GH	V.	<sup>US-</sup> 2,573,375	10/30/1951	T.W. Winstead	
GH	V.	<sup>US-</sup> 4,597,527	07/01/1986	Sands	
GH	V	<sup>US-</sup> 4,627,796	12/09/1986	Moore	
GH	1/	<sup>US-</sup> 5,009,413	04/23/1991	Allen	
CH.	<b>7</b>	US- 5,199,114	04/06/1993	Christopher	
GH	7	<sup>US-</sup> 5,928,053	07/27,1999	Henderson	
(	H 🗸	<sup>US-</sup> 5,992,697	11/30/1999	James	
GH	1/	<sup>US-</sup> Des. 26,839	03/30/1897	J. Lines	
GH	1.7	<sup>US-</sup> Des. 240,130	06/01/1976	William A. Folke	
		US-			
		US-	<del> </del>		
		US-			

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No.	te Foreign Patent Document Publication	Publication	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages	
			- price it of other possition	Or Relevant Figures Appear	T	
	ļ					
	L					L
				<del></del>		┡
	<del> </del> -	·		· · · · · · · · · · · · · · · · · · ·		╄
						╄

Examiner		Date	
Signature	/Gregory Huson/	Considered	09/18/2006
AND ALL ALL AND AND ADDRESS.			

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspio.gov">www.uspio.gov</a> or MPEP 901.04. Enter Office that Issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Nich of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. Applicant is to place a check mark here if English language Translation is attached.

Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need essistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

	Notice of Reference	s Cited		plication/Control No. /942,326	Red	examination	atent Under OGUSLAW		
	Notice of Neterence	3 Citeu	Ex	aminer	Art	Unit	Dono 1 of 1		
			Gr	egory L. Huson	376	64	Page 1 of 1		
			U.S. PATEN	IT DOCUMENTS					
	Document Number Country Code-Number-Kind Code	Date MM-YYYY		Name			Classification		
А	US-5,266,069	11-1993	Thorne, Lev	vis C.		482/111			
В	US-5,231,951	08-1993	Tagar et al.			114/345			
С	US-					<del>-</del> -			
D	US-								
E	US-			_					
F	US-								
G	US-			. <del> </del>					
н	US-								
1	US-								
J	US-								
K	US-								
L	US-								
М	US-								
			FOREIGN PAT	TENT DOCUMENTS			·		
	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Count	гу	Name		Classification		
N									
0									
Р									
Q		·							
R									
s									
Т									
			NON-PATE	T DOCUMENTS		1,			
	Includ	de as applicable	e: Author, Title I	Date, Publisher, Edition	or Volume, Pertine	ent Pages)			

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
•	>	
	>	
	x	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)

Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

 	Ca	se	1:	08	-C	V-(	02	90	)9-	N	RE	3	Do	CU	ım										20/2	200							of 5	
		Ir	ıde	ex	0	f C	Cla	nin	ns							A	ppl	lica	tio	n/C	On	tro	l N	0.			A R	lqq see	ica an	nt(: ina	s)/F atio	Pate on	ent u	ınder
																		42		6							0	RL	OV	vs	ΚI,	В	)GU	SLAW
			Ш													E	xar	nin	er								A	rt L	Init					
 	11886		E E I I		[]											G	re	gor	y L	<u>.                                    </u>	luse	on					3764				<del></del>	<u> </u>		
				_	_	$\neg$				·	(T	hrou	ah r	ıun	ner	al)	$\neg$	ſ						_		П		_		•		٦		
		✓	K	ejec	CTO	a	!		_			Ca	ince	lle	d				N	N	on-l	=18	Cte	•a		A			pp	eai		4		
		=	Α	llov	Ve:	d			÷			Re	stri	cte	d		I Interference O				0		Ot	jec	tec	<b>t</b>			• *					
Cla	aim				Ç	ate	•					Cla	im	L		Date Claim						Date					İ							
Final	Original	9/18/06										Final	Original											Final	Original									! 
	1	۷ ۵	_	-	_								0	_		Н		4	4	4	+	4.	ŀ				$\dashv$	$\dashv$	$\dashv$	$\perp$	4	4.		
_	2	1	$\exists$		$\exists$	$\dashv$								F						$\dashv$	1	╣.	þ				$\exists$	$\rightrightarrows$	#	$\downarrow$	#	#	$\perp$	
	3	1		$\exists$	$\exists$									$\vdash$	L				╛		$\pm$	$\exists$	F						$\pm$	$\pm$	$\pm$	$\pm$		
	5 6	7	$\neg$	7	$\dashv$	$\neg$										H		$\Box$	7	$\dashv$	$\mp$	7	F			П	$\dashv$	$\neg$	$\dashv$	7	7	1	$\blacksquare$	
	7	V		〓															$\exists$		$\downarrow$	<b>_</b>	L				$\exists$		$\downarrow$	#	#	$\downarrow$		
	8	7	$\dashv$	$\dashv$	$\dashv$	$\dashv$				Н				-	H	Н			$\dashv$	_	+	4	-			Н	$\dashv$	$\dashv$	$\dashv$	+	╁	+	+	
	10	1		4		4		•													1	1	-			П	$\exists$		$\dashv$	1	1	#		
	11 12	1		$\perp$	$\exists$	$\dashv$													$\exists$	1	+	1	L						+	$\dagger$	+	+	+	
	13	1			_	_								-								4.	F					$\dashv$	7	$\dashv$	+	$\mp$	$\perp$	
	15	1	$\Box$	$\exists$		$\exists$													$\exists$		1	₫.						#	⇉	1	1			
	16 17	7	$\dashv$	$\dashv$	_			Н						╁	┝	-	_		$\dashv$			- -				$\vdash$		$\dashv$	$\dashv$	+	+	+	+	
		П	$\exists$	$\dashv$	$\dashv$	$\exists$												$\dashv$	_	$\exists$	1	7	F						1	1	#	1	$\bot$	
					$\exists$						-3											₫.	L				$\exists$		$\pm$	$\pm$	$\pm$	$\pm$		
<u> </u>	ļ	Н	-	-	$\dashv$						- 17			├	┝	H	Н	$\dashv$	$\dashv$	-	+		4#			H	-		$\dashv$	$\dashv$	+	+	+	
																					$\dashv$	1	ļ						$\exists$	$\downarrow$	$\downarrow$	#		
	<u> </u>	Н	$\dashv$	+	_			-	-	_				╁	┢╌	$\vdash$		$\dashv$	$\dashv$		+	-	-			-			+	+	+	+	+	
			_		$\dashv$	_								L		F		$\Box$	$\Box$	4	7	4				$\Box$		$\Box$	4	7	7	1		
				$\exists$	$\exists$						1.4							$\exists$			$\pm$	Ⅎ.			,				$\pm$	$\pm$	$\pm$	$\pm$		
		Н	-	-	-	$\dashv$			<u> </u>		,			$\vdash$	H	<del>                                     </del>	H	$\dashv$		$\dashv$	$\mp$		<i>::</i>			$\square$	H	$\exists$	7	7	4		1	
	<u> </u>	H		$\exists$		$\rightrightarrows$					2								$\exists$	$\exists$	$\downarrow$	1				$\Box$			$\exists$	$\downarrow$	$\downarrow$	$\pm$		
-		H	$\dashv$	$\dashv$	$\dashv$			-	$\vdash$	$\vdash$				$\vdash$	$\vdash$	-	-	$\vdash$	$\dashv$	$\dashv$	+	<b>-</b>  .	-			$\vdash$		$\dashv$	$\dashv$	+	+	+	+	
		П		_							- 1			L						$\exists$	#	$\exists$	ļ						$\dashv$	$\dashv$	$\downarrow$	1	#	
		H		_	$\dashv$			$\vdash$	H	$\vdash$	.;		$\vdash$	$\vdash$	$\vdash$	$\vdash$			_	$\dashv$	+	+	1	-		$\vdash$	$\dashv$		$\dashv$	+	+	+	+	
		П		7	$\exists$	$\Box$					7		<u> </u>	<del>[</del>	F	F			$\Box$		1	7	F						7	$\dashv$	#	7		
ļ		Ħ																				٦,	E						士	$\pm$	$\pm$	士	1	
		$\vdash$	-	$\dashv$	$\dashv$	$\dashv$					,		ļ	$\vdash$	$\vdash$	$\vdash$	$\vdash$	$\vdash$		$\dashv$	$-\Gamma$	4	F			H		-	$\dashv$	$\dashv$	4	Ŧ	$\bot$	
				$\exists$		寸					i										$\pm$	վ.	E						#	$\Rightarrow$	$\downarrow$	#	土	
		Н	-	-	$\dashv$		$\vdash$	-	-			_		╁	-	-	$\vdash$	Н	_	-+	+	$\dashv$	+	_		$\vdash$	$\vdash$	$\dashv$	$\dashv$	+	+	+	+	
		П	$\exists$	$\dashv$	$\exists$															$\exists$	$\downarrow$	$\exists$				Ħ			寸		#	$\downarrow$	士	
	<u> </u>	$\vdash$	$\dashv$	$\dashv$	$\dashv$	$\dashv$			-	Н			$\vdash$	$\vdash$	$\vdash$	$\vdash$	$\vdash$	$\vdash$	$\dashv$		$\dashv$	$\dashv$	+			$\vdash$	$\vdash$	$\dashv$	$\dashv$	$\dashv$	+	+		
		F	$\dashv$	4	$\exists$	$\dashv$	_	П						F						#	#	$\exists$	ļ						#	$\dashv$	#	#		
				$\pm$	$\exists$	$\exists$							<u> </u>								$\pm$		ŀ						Ⅎ	$\pm$	$\pm$	$\pm$	1	
		_	-				-	-	-	-												_	_											•

Applicant(s)/Patent under Reexamination

ORLOWSKI, BOGUSLAW

Art Unit



Gregory L. Huson

10/942,326

Examiner

Application/Control No.

3764

SEARCHED								
	JLAN	CHED	r					
Class	Subclass	Date	Examiner					
222	79, 409	9/18/2006	GLH					
446	153, 473	9/18/2006	GLH					
482	55, 111	9/18/2006	GLH					
92	249	9/18/2006	GLH					
		-						
	•							

INT	INTERFERENCE SEARCHED										
Class	Subclass	Date	Examiner								

SEARCH NOTES (INCLUDING SEARCH STRATEGY)								
	DATE	EXMR						
Consulted Look (92), Crow (482), Yu (446). Also see east text search attached	9/18/2006	GLH						



Page 40 of



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725788588 US Date of Deposit: November 8, 2006 I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Vivian Campbell Name: Signature

## AMENDMENT UNDER 37 C.F.R. 1.111 IN RESPONSE TO OFFICE ACTION DATED **SEPTEMBER 27, 2006**

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed September 27, 2006, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks** begin on page 5 of this paper.

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

### **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An <u>expandable and contractible</u> toy for receiving, <u>and</u> storing <u>water when disposed towards an expanded configuration</u>, and squirting water <u>when disposed towards a contracted configuration</u>, the toy <u>and being</u> encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape when in the contracted <u>configuration</u>.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (original) The toy of claim 1 wherein said material is closed-cell polyethylene foam.
- 8. (original) The toy of claim 1 wherein said material is closed-cell ethylene vinyl acetate foam.

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the tubular housing to provide the toy with a cylinder shape.

- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. (canceled)
- 15. (original) The toy of claim 14 wherein said soft material is closed-cell polymer foam.
- 16. (original) The toy of claim 14 wherein said material is closed-cell polyethylene foam. Page 3 of 6

Case 1:08-cv-02909-NRB Document 12-7 Filed 08/20/2008 Page 43 of 57

Appl. No. 10/942,326 Amdt. Filed 11/8/06 in response to 9/27/06 Office Action

17. (original) The toy of claim 14 wherein said material is closed-cell ethylene vinyl acetate foam.

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

#### REMARKS

Claims 1-13 and 15-17 are pending. By this Amendment, claims 1-4 and 14 are canceled, and claims 5 and 9 are amended.

Reconsideration based on the following remarks is respectfully requested.

The Office Action rejects claims 1-17 under 35 U.S.C. 103(a) over Sands (U.S. Patent No. 4,597,527) in view of Henderson (U.S. Patent No. 5,928,053), further in view of Tagar (U.S. Patent No. 5,231,951). This rejection is respectfully traversed.

The applied references, either taken alone or in combination, do not disclose or suggest an expandable and contractible squirting toy where, <u>inter alia</u>, the toy has a cylinder shape when in the contracted condition, as recited in claim 5, and as similarly recited in claim 9.

One of the advantages provided by the claimed invention is that it resembles a "swimming noodle", particularly when in the contracted configuration, thus making it a more attractive source of entertainment for a child. This is explained in the specification at, for example, page 3, line 24 - page 4, line 2.

The Sands toy is not cylinder shaped, but instead has various protrusions at both ends, so that it does not resemble the "swimming noodle". Thus, the Sands toy is much less attractive to a child compared to the inventive squirting toy. Further, the Henderson patent discloses providing a foam casing only on the handle portion of the toy, so that one would not be motivated based on the teaching of Henderson to encase the entire Sands toy in foam material to provide the Sands toy with a "swimming noodle"-type shape. Tagar is directed to mounting a squirting toy on a flotation device, and is not at

Page 5 of 6

Amdt. Filed 11/8/06 in response to

9/27/06 Office Action

all related to encasing such a toy in foam or similar material, or for that matter encasing a toy to provide the toy with a cylinder shape.

For at least these reasons, it is respectfully submitted that independent claims 5 and 9 are in condition for allowance. The dependent claims are also in condition for allowance for the reasons discussed above as well as for the additional features they recite.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

November 8, 2006

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06)

Approved for use through 1/31/2007. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

P	PATENT APPLICATION FEE DETERMINATION RECOR Substitute for Form PTO-875							application or l 10/94	To be Mailed				
	Al	PPLICATION A	AS FILE (Column 1			Column 2)		SMALL	ENTITY 🛛	OR		HER THAN ALL ENTITY	
	FOR	NU	JMBER FIL	.ED	NUN	IBER EXTRA		RATE (\$)	FEE (\$)		RATE (\$)	FEE (\$)	
	BASIC FEE (37 CFR 1.16(a), (b),	or (c))	N/A			N/A		N/A			N/A		
	SEARCH FEE (37 CFR 1.16(k), (i), (i)	or (m))	N/A			N/A		N/A			N/A		
	EXAMINATION FE (37 CFR 1.16(o), (p),		N/A		N/A			N/A			N/A		
TOTAL CLAIMS (37 CFR 1.16(i))			mir	nus 20 = *				x \$ =		OR	x \$ =		
INDEPENDENT CLAIMS (37 CFR 1.16(h))		1S	m	inus 3 = *				x \$ =			x \$ =		
APPLICATION SIZE FEE (37 CFR 1.16(s))		sheef is \$25 additi	If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).										
	MULTIPLE DEPEN	NDENT CLAIM PRI	ESENT (3	7 CFR 1.16(j)	))								
* If t	* If the difference in column 1 is less than zero, enter "0" in column 2.							TOTAL			TOTAL		
APPLICATION AS AMENDED – PART II  (Column 1) (Column 2) (Column 3)  CLAIMS HIGHEST								SMAL	L ENTITY	OR		HER THAN MALL ENTITY	
AMENDMENT	11/08/2006	REMAINING AFTER AMENDMENT		NUMBER PREVIOU PAID FOR	SLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)	
)ME	Total (37 CFR 1.16(i))	* 12	Minus	** 17		= 0		X \$25 =	0	OR	x \$ =		
Z	Independent (37 CFR 1.16(h))	* 2	Minus	***3		= 0		X \$100 =	0	OR	x \$ =		
√ME	Application S	ize Fee (37 CFR 1	.16(s))										
	FIRST PRESEN	NTATION OF MULTIP	LE DEPEN	DENT CLAIM	(37 CFF	R 1.16(j))				OR			
								TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE		
		(Column 1)		(Column		(Column 3)							
		CLAIMS REMAINING AFTER AMENDMENT		HIGHES NUMBE PREVIOU PAID FO	ER JSLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)	
Z Z	Total (37 CFR 1.16(i))	*	Minus	**		=		x \$ =		OR	x \$ =		
AMENDMENT	Independent (37 CFR 1.16(h))	*	Minus	***		=		x \$ =		OR	x \$ =		
H H	Application S	ize Fee (37 CFR 1	.16(s))										
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))										OR			
* lf	the entry in column	1 is less than the e	entry in col	umn 2. write	"0" in	column 3.	• '	TOTAL ADD'L FEE	ootuu uu oo t	OR	TOTAL ADD'L FEE		
** If	the "Highest Number f the "Highest Numb "Highest Number P	er Previously Paid per Previously Paid	For" IN TH I For" IN T	HIS SPACE I	is less is less	than 20, enter "20" than 3, enter "3".		catherin	nstrument Ex ne d. smith priate box in colu		er:		

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

pplication No. : 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725833239 US

Date of Deposit: February 8, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA. 22313-1450.

Name: Viylan Campbell

Signature:

## **SUPPLEMENTAL AMENDMENT**

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Further to the Amendment filed November 8, 2006, please amend the aboveidentified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

Supplemental Amdt. Filed 2/8/06

## **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (previously presented) An expandable and contractible toy for receiving, and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material that has a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (currently amended) The toy of claim 1–5 wherein said material is closed-cell polyethylene foam.
- 8. (currently amended) The toy of claim  $\frac{1-5}{2}$  wherein said material is closed-cell ethylene vinyl acetate foam.

Appl. No. 10/942,326

Supplemental Amdt. Filed 2/8/06

9. (previously presented) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering the tubular housing to provide the toy with a cylinder shape.

- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.
- 14. (canceled)
- 15. (currently amended) The toy of claim 14-9 wherein said soft material is closed-cell polymer foam.

Supplemental Amdt. Filed 2/8/06

- 16. (currently amended) The toy of claim 14-9 wherein said material is closed-cell polyethylene foam.
- 17. (currently amended) The toy of claim 14-9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (new) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Supplemental Amdt. Filed 2/8/06

#### **REMARKS**

Claims 1-13 and 15-18 are pending. By this Amendment, claims 7, 8 and 15-17 are amended and claim 18 is added.

Reconsideration of the application based on the remarks presented in the November 8, 2006 Amendments is respectfully requested.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

February 8, 2007

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06)

Approved for use through 1/31/2007. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

P	PATENT APPLICATION FEE DETERMINATION RECOR Substitute for Form PTO-875							application or l 10/94	To be Mailed			
	Al	PPLICATION A	AS FILE (Column 1		•	Column 2)		SMALL	ENTITY 🛛	OR		HER THAN ALL ENTITY
	FOR	NU	JMBER FIL	.ED	NUN	MBER EXTRA		RATE (\$)	FEE (\$)		RATE (\$)	FEE (\$)
	BASIC FEE (37 CFR 1.16(a), (b),	or (c))	N/A			N/A		N/A			N/A	
	SEARCH FEE (37 CFR 1.16(k), (i), (i)	or (m))	N/A			N/A		N/A			N/A	
	EXAMINATION FE (37 CFR 1.16(o), (p),		N/A		N/A			N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))			mir	nus 20 = *				x \$ =		OR	x \$ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))		IS	m	inus 3 = *				x \$ =			x \$ =	
APPLICATION SIZE FEE (37 CFR 1.16(s))		sheet is \$25 additi	If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).									
	MULTIPLE DEPEN	IDENT CLAIM PRI	ESENT (3	7 CFR 1.16(j)	))							
* If t	* If the difference in column 1 is less than zero, enter "0" in column 2.							TOTAL			TOTAL	
APPLICATION AS AMENDED – PART II  (Column 1) (Column 2) (Column 3)  CLAIMS HIGHEST								SMAL	L ENTITY	OR		ER THAN ALL ENTITY
AMENDMENT	02/08/2007	REMAINING AFTER AMENDMENT		NUMBER PREVIOU PAID FOR	ISLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
)ME	Total (37 CFR 1.16(i))	* 13	Minus	** 20		= 0		X \$25 =	0	OR	x \$ =	
II I	Independent (37 CFR 1.16(h))	* 3	Minus	***3		= 0		X \$100 =	0	OR	x \$ =	
√ME	Application S	ize Fee (37 CFR 1	.16(s))									
	FIRST PRESEN	NTATION OF MULTIP	LE DEPEN	DENT CLAIM	(37 CFF	R 1.16(j))				OR		
								TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	
		(Column 1)		(Column	າ 2)	(Column 3)						
		CLAIMS REMAINING AFTER AMENDMENT		HIGHES NUMBE PREVIOU PAID FO	∃R JSLY	PRESENT EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
N E N	Total (37 CFR 1.16(i))	*	Minus	**		=		x \$ =		OR	x \$ =	
AMENDMENT	Independent (37 CFR 1.16(h))	*	Minus	***		=		x \$ =		OR	x \$ =	
H H	Application S	ize Fee (37 CFR 1	.16(s))									
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))										OR		
* lf	the entry in column	1 is less than the e	entry in col	umn 2 write	e "0" in	column 3	•	TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	
** If	the "Highest Number f the "Highest Numb "Highest Number P	er Previously Paid per Previously Paid	For" IN TH I For" IN T	HIS SPACE I	is less is less	than 20, enter "20' than 3, enter "3".		Linda W			er: 	

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.			
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683			
	7590 03/30/2007 THSTEIN & EBENSTE	EXAMINER					
90 PARK AVE	NUE	HUSON, GREGORY L					
NEW YORK, N	NY 10016	•	ART UNIT	PAPER NUMBER			
			3751				
SHORTENED STATUTOR	ORTENED STATUTORY PERIOD OF RESPONSE MAIL DATE		DELIVERY MODE				
3 MOI	NTHS	03/30/2007	РАР	PER			

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Case 1:08-cv-02909-NRB	Docume	nt 12-7	Filed 08/20/2008	Page 54 of 57
			Application	n No.	Applicant(s)
			10/942,326	6	ORLOWSKI, BOGUSLAW
	Office Action Summary	-	Examiner		Art Unit
			Gregory L.		3751
Period fo	The MAILING DATE of this commun r Reply	nication appe	ears on the	cover sheet with the co	orrespondence address
WHIC - Exten after 5 - If NO - Failur Any re	DRTENED STATUTORY PERIOD F HEVER IS LONGER, FROM THE IN sions of time may be available under the provisions SIX (6) MONTHS from the mailing date of this comperiod for reply is specified above, the maximum is to to reply within the set or extended period for reply eply received by the Office later than three months d patent term adjustment. See 37 CFR 1.704(b)	MAILING DA s of 37 CFR 1.13 munication. tatutory period wi y will, by statute,	TE OF THI 6(a). In no ever ill apply and will cause the applic	S COMMUNICATION  tt, however, may a reply be time  expire SIX (6) MONTHS from to  tation to become ABANDONED	l. ely filed the mailing date of this communication. D (35 U.S.C. § 133).
Status			·		
1)[	Responsive to communication(s) file	ed on <u>08 No</u>	vember 20	06 and 08 February 2	<u>007</u> .
2a)⊠	This action is FINAL.	2b) This	action is no	n-final.	•
3)	Since this application is in condition	for allowan	ce except f	or formal matters, pro	secution as to the merits is
	closed in accordance with the pract	ice under E	x parte Qua	yle, 1935 C.D. 11, 45	3 O.G. 213.
Dispositi	on of Claims			•	
4)	Claim(s) <u>5-13 and 15-18</u> is/are pend	ding in the a	pplication.		
-	4a) Of the above claim(s) is/a	-	• •	sideration.	
	Claim(s) is/are allowed.				
6)□	Claim(s) <u>5-13 and 15-18</u> is/are rejection	cted.			
7)	Claim(s) is/are objected to.				
8)[	Claim(s) are subject to restri	ction and/or	election re	quirement.	
Application	on Papers				
9) 🔲 -	The specification is objected to by the	ne Examiner	•		
10)🛛	The drawing(s) filed on is/are	: a)⊠ acce	pted or b)[	objected to by the E	xaminer.
	Applicant may not request that any obje	ection to the d	lrawing(s) be	held in abeyance. See	37 CFR 1.85(a).
	Replacement drawing sheet(s) including	g the correction	on is require	d if the drawing(s) is obj	ected to. See 37 CFR 1.121(d).
11) 🔲 -	The oath or declaration is objected t	o by the Exa	aminer. Not	e the attached Office	Action or form PTO-152.
Priority u	nder 35 U.S.C. § 119	٠			
12) 🔲 /	Acknowledgment is made of a claim	for foreign	priority und	er 35 U.S.C. § 119(a)	-(d) or (f).
a)[	☐ All b)☐ Some * c)☐ None of:				
	1. Certified copies of the priority	documents	have been	received.	
	2. Certified copies of the priority	documents	have been	received in Application	on No
	3. Copies of the certified copies	-	-		d in this National Stage
	application from the Internation		•	• ••	
* 8	ee the attached detailed Office action	on for a list o	of the certifi	ed copies not received	d.
•					
Attachment	(s)				
1) Notice	e of References Cited (PTO-892)			4) Linterview Summary (	(PTO-413)
	e of Draftsperson's Patent Drawing Review (	PTO-948)		Paper No(s)/Mail Da	te
	nation Disclosure Statement(s) (PTO/SB/08)  No(s)/Mail Date			5)  Notice of Informal Pa 6)  Other:,_,	•
S. Patent and Tr				File \	Wrapper '642 Patent

Application/Control Number: 10/942,326 Page 2

Art Unit: 3751

1. This action is responsive to applicant's amendments and arguments presented 11/8/06 and 2/8/07.

- 2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 3. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  - 1. Determining the scope and contents of the prior art.
  - 2. Ascertaining the differences between the prior art and the claims at issue.
  - 3. Resolving the level of ordinary skill in the pertinent art.
  - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 4. Claims 5-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sands in view of Henderson as taught by Tagar et al..

Sands shows a similar squirt toy that utilizes a piston in a reciprocating motion to load and discharge water (see the drawing figures and col. 2 lines 14-22). The Sands toy having a cylinder shape 19, over the greatest portion of its length, when the toy is in the contracted configuration.

Sands fails to show the toy encased in foam (of a particular type) to provide buoyancy when the device is used in a pool.

Application/Control Number: 10/942,326

Art Unit: 3751

Page 3

Henderson shows a water toy for use in a pool that provides buoyancy at 20 by means of encasing the tubular toy in 'foam rubber, cork, Styrofoam or the like' for safety (easy to grasp) and buoyancy (to enable it to float to the surface if dropped).

Tagar et al. teach providing buoyancy (through 22) to a similar water squirt toy (fig. 7 and col. 5 lines 19-23) in a pool environment.

Thus, it would have been obvious to one of ordinary skill in the art to have provided the Sands' toy with an outer casing of foam or the like as shown by Henderson to provide increased safety and buoyancy in a pool environment as taught by Tagar et al. The particular foam or buoyant material chosen is a function of the size and weight of the device, and the cost of manufacture, as suggested by Henderson and also by applicant's use of multiple materials, and thus represents an obvious design choice to one of ordinary skill in the art.

- 5. Applicant's arguments with respect to claims 5-13 and 15-18 have been considered but are moot in view of the new ground(s) of rejection.
- 6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Application/Control Number: 10/942,326

Art Unit: 3751

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication should be directed to Gregory L.

Huson at telephone number 571-272-4887.

Gregory L. Huson

**Supervisory Patent Examiner** 

Page 4

Art Unit 3751

## EXHIBIT C

Index of C	laims	Ар	pplication/0	Control No.		Applicant(s)/Patent under Reexamination			
			0/942,326 kaminer			ORLOWSKI Art Unit	BOGUS	LAW	
			regory L. F	ducon		3764			
			reguly L. I	103011	_		 ,		
√ Rejected	_ (Thre	ough numeral) Cancelled	NN	on-Elected	A	Appeal			
= Allowed	+	Restricted	_ l In	nterference	0	Objected		• •	
Claim Date		laim	Date Cla			Date			
Final Original 8/18/08		Original		Final					
	+++++				Н		++-		
2 1					H				
4 7 5 7 7									
6 1 1							##		
8 1 1								•	
9 1 10 1 1					Н				
11 V V					$\vdash$		+		
13 V V								•	
15 V V					E				
17 1									
18 1		<u>.                                    </u>			$\vdash$		++-		
					F				
					$\vdash$				
	+++-				$\vdash$				
							丗		
						╂┼┼┼	++-		
	+++-	<del>                                     </del>					$\Box$		
					F				
					$\vdash$	╂┼┼┼	+++		
	+++	++++			F				
					Ħ				
		<del>                                     </del>			$\vdash$				
	<del></del>	<del>                                     </del>	+++		$\Box$	+H-H-1	+	•	
	<del>                                      </del>				П		##		

U.S. Patent and Trademark Office

Part of Paper No. 20060918

Case	1:08-	cv-0290	9-NRE
Case	1.00	CV-UZ30	

Search Notes					

Application/Control No.	Applicant(s)/Patent under Reexamination ORLOWSKI, BOGUSLAW		
10/942,326			
Examiner	Art Unit		
Gregory L. Huson	3764		

SEARCHED					
Class	Subclass	Date	Examiner		
222	79, 409	9/18/2006	GLH		
446	153, 473	9/18/2006	GLH		
482	55, 111	9/18/2006	GLH		
92	249	9/18/2006	GLH		
above	updated	3/28/07	184)		
	<b>,</b>				
			•		

INTERFERENCE SEARCHED					
Class	Subclass	Date	Examiner		
			1		
	<u> </u>	<del></del>	†		

SEARCH NOTES (INCLUDING SEARCH STRATEGY)				
	DATE	EXMR		
Consulted Look (92), Crow (482), Yu (446). Also see east text search attached	9/18/2006	GLH		
Updated	3/28/07	824		
		·		
	·			



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725790272 US

Date of Deposit: June 15, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Name: Vivian Carhpbe
Signature: Win Carry

# AMENDMENT UNDER 37 C.F.R. 1.116 IN RESPONSE TO FINAL REJECTION DATED MARCH 30, 2007

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed March 30, 2007, and further to the telephone interview conducted by Applicant's representative with Examiner Huson on June 12, 2007, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

**Remarks** begin on page 5 of this paper.

Appl. No. 10/942,326

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

### **Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

## **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along substantially its entire length when in the contracted configuration, the soft material that hashaving a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross section along substantially its entire length when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (previously presented) The toy of claim 5 wherein said material is closed-cell polyethylene foam.

Appl. No. 10/942,326

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

8. (previously presented) The toy of claim 5 wherein said material is closed-cell ethylene vinyl acetate foam.

- 9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, <u>said tubular housing having a first end and a second end</u>, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering <u>substantially</u> the <u>entire</u> tubular housing <u>from the first end to the second end to provide the toy with a cylinder shape, <u>said tubular housing having a uniform cross-section along substantially its entire length when said chamber is fully contracted.</u></u>
- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

- 14. (canceled)
- 15. (previously presented) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 16. (previously presented) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 17. (previously presented) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section substantially along its entire length when said chamber is fully contracted.

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

### **REMARKS**

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are amended.

Applicant appreciates the courtesies extended to Applicant's representative by Examiner Huson during the June 12, 2007 telephone interview.

Reconsideration based on the following remarks is respectfully requested.

The Office Action rejects claims 5-13 and 15-18 under 35 U.S.C. 103(a) over Sands (U.S. Patent No. 4,597,527) in view of Henderson (U.S. Patent No. 5,928,053) and Tagar et al. (U.S. Patent No. 5,231,951). This rejection is respectfully traversed.

Sands, alone or in combination with Henderson and Tagar, does not disclose or suggest a squirting toy the cylinder of which is encased in a soft material along substantially its entire length when in a contracted configuration and that has a uniform cross-section along substantially its entire length, as recited in claim 5, and as similar recited in claims 9 and 18.

The Sands toy does not have a uniform cross section along its length, but instead has various protrusions at both ends. Thus, the Sands toy does not resemble the "swimming noodle", and is much less attractive to a child compared to the inventive squirting toy.

The Office Action cites the Henderson patent to show that it would have been obvious to encase the toy in a soft material. Although the Henderson patent teaches the use of a foam rubber handle 28 on a toy that uses a whipping action to fling water, the handle is only disposed at one end of the toy, and not over substantially the entire length

Page 5 of 6

Appl. No. 10/942,326

Amdt. Filed on June 15, 2007 In Response to

Office Action mailed 3/30/07

of the toy, as in the claimed invention. Thus, the whipping action of the Henderson toy

presents a hazard to children using the toy since the end to be whipped is not encased in

a soft material. In contrast, the inventive toy is encased in a soft material, providing a

much safer product as compared to the prior art.

Tagar is directed to mounting a squirting toy on a flotation device, and is not at

all related to encasing such a toy in foam or similar material.

For at least these reasons, it is respectfully submitted that independent claims 5, 9

and 18 are in condition for allowance. The dependent claims are also in condition for

allowance for the reasons discussed above as well as for the additional features they

recite.

Applicant respectfully requests that a timely Notice of Allowance be issued in this

case.

If any further fees are required to preserve the pendency of the subject

application, please debit Deposit Account No. 01-1785. Likewise, if there is

overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

Attorneys for Applicants

90 Park Avenue

New York, NY 10016

(212) 336-8000

Dated: New York, New York

June 15, 2007

Benjamin M. Halpern

Registration No.: 46,494

Page 6 of 6

Bv:

File Wrapper '642 Patent Page 63

372212.1

PTO/SB/06 (07-06)
Approved for use through 1/31/2007. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

P	Under the Pa		E DET	ERMINATIO		_	opplication or	of information unle Docket Number 12,326	Fi	splays a valid ling Date 16/2004	OMB control numbe
	Al	PPLICATION A	AS FILE (Column		(Column 2)		SMALL	ENTITY 🛛	OR		HER THAN ALL ENTITY
FOR NUMBER		UMBER FI	.ED . NUMBER EXTRA			RATE (\$)	FEE (\$)		RATE (\$)	FEE (\$)	
	BASIC FEE (37 CFR 1.16(a), (b),	or (c))	N/A		N/A		N/A			N/A	
SEARCH FEE (37 CFR 1.16(k), (i), or (m))		or (m))	N/A		N/A		N/A			N/A	
	EXAMINATION FEE (37 CFR 1.16(0), (p), or (q))		N/A		N/A		N/A			N/A	
	TAL CLAIMS CFR 1.16(i))		mir	nus 20 =			x \$ =		OR ·	x \$ =	
	EPENDENT CLAIM CFR 1.16(h))	IS	m	inus 3 = *			x \$ =		1	x \$ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))  If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).					·						
Ц	MULTIPLE DEPEN								1		
* If t	the difference in colu	umn 1 is less than	zero, ente	r "0" in column 2.			TOTAL		l	TOTAL	
	APP	(Column 1)	AMENL	(Column 2)	(Column 3)	_	SMAL	L ENTITY	OR		ER THAN ALL ENTITY
AMENDMENT	02/08/2007	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT • EXTRA		RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
ME	Total (37 CFR 1.16(i))	<b>• 13</b>	Minus	<b>**</b> 20	= 0		X \$25 =	0	OR	x \$ =	
	Independent (37 CFR 1.18(h))	• 3	Minus	***3	= 0		X \$100 =	0	OR	x \$ =	
٩M	Application Si	ize Fee (37 CFR 1	.16(s))								
,	FIRST PRESEN	NTATION OF MULTIF	PLE DEPEN	DENT CLAIM (37 CF	R 1.16(j))				OR		
6	0/16/67	(Column 1)		(Column 2)	(Column 3)		TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	
		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE (\$)	ADDITIONAL		RATE (\$)	ADDITIONAL FEE (\$)
Ë	Total (37 CFR 1.18(i))	. 15	Minus	·· 20	= /)		x \$ =		OR	x \$ =	
AMENDMENT	Independent (37 CFR 1.16(h))	. 3	Minus	··· 3	= <b>(</b> )		x \$ =	X	OR	x \$ =	
EN	Application Si	ize Fee (37 CFR 1	16(s))								
AM	FIRST PRESEN	ITATION OF MULTIP	LE DEPEN	DENT CLAIM (37 CF	R 1.16(j))		L		OR		
						• '	TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	
** If	the entry in column the "Highest Numbe f the "Highest Numb	er Previously Paid	For" IN Th	IIS SPACE is less	than 20, enter "20"	<b>.</b>	Legal Ir Linda W	nstrument Ex /. Badie	amin	er:	

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683	
1912 AMSTERRO	7590 06/22/2007 THSTEIN & EBENSTEIN	I LLP	EXAM	INER	
90 PARK AVE	ENUE	MAHONE, KRISTIE ANNETTE			
NEW YORK, I	NY 10016		ART UNIT	PAPER NUMBER	
			3751		
			MAIL DATE	DELIVERY MODE	
			06/22/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Case 1:08-cv-02909-NRB Document 1:	2-8 Filed 08/20/2008	Page 12 of 48				
	Application No.	Applicant(s)				
Interview Summary	10/942,326	ORLOWSKI, BOGUSLAW				
	Examiner	Art Unit				
	Gregory L. Huson	3751				
All participants (applicant, applicant's representative, PTO	personnel):					
(1) <u>Gregory L. Huson</u> .	(3)					
(2) <u>Ben Halpern</u> .	(4)					
Date of Interview: <u>12 June 2007</u> .						
Type: a)⊠ Telephonic b)□ Video Conference c)□ Personal [copy given to: 1)□ applicant 2	2)⊡ applicant's representative	. · . •]				
Exhibit shown or demonstration conducted: d) Yes If Yes, brief description:	e)⊠ No.					
Claim(s) discussed: <u>5-13 and 15-18</u> .						
Identification of prior art discussed: of record, as applied.	,					
Agreement with respect to the claims f)⊠ was reached. g)□ was not reached. h)□ N/A.						
Substance of Interview including description of the general reached, or any other comments: <u>See Continuation Sheet</u> .	nature of what was agreed to	if an agreement was				
(A fuller description, if necessary, and a copy of the amend allowable, if available, must be attached. Also, where no callowable is available, a summary thereof must be attached	opy of the amendments that w					
THE FORMAL WRITTEN REPLY TO THE LAST OFFICE A INTERVIEW. (See MPEP Section 713.04). If a reply to the GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER INTERVIEW DATE, OR THE MAILING DATE OF THIS INT FILE A STATEMENT OF THE SUBSTANCE OF THE INTE requirements on reverse side or on attached sheet.	last Office action has already OF ONE MONTH OR THIRTY ERVIEW SUMMARY FORM, V	been filed, APPLICANT IS DAYS FROM THIS WHICHEVER IS LATER, TO				
		,				
		•				
Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.	Examiner's sign	ature, if required				

Document 12-8

**Application No. 10/942,326** Filed 08/20/2008 Page 13 of 48

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: It was agreed that adding the limitations "the toy having a uniform cross section across it's entire length when in the contracted configuration" and "the soft bouyant material encasing the toy along it's entire length when in the contracted configuration" to all of the independent claims appears to overcome the prior art as applied. An updated search will be conducted when an amendment after final containing the proposed limitations is filed. Applicant's informal fax of 6/11/07 is attached to this interview summary.

2mgl/L-6/R/87 Primary Examinar JUN-11-2007 15:17

AMSTER ROTHSTEIN EBENSTIE

1 212 336 8001

P.001



FACSIMILE

90 Park Avenue

New York NY 10016

Main

212 336 8000

Fax

212 336 8001

Wcb

www.arclaw.com

June 11, 2007

To:

Examiner Huson

Fax:

571-273-4887

U.S. PTO

Voice:

571-272-4887

From:

Benjamin M. Halpern, Esq.

Re:

U.S. Patent Application Ser. No. 10/942,326 (69281/54) (69281.54)

Prepd. by:

bmh

Return to:

bmh

No. of pages including cover:

2

Examiner Huson:

As requested, attached is a proposed agenda for the telephone interview to be conducted in the above-identified patent application.

After you have reviewed the agenda, please contact me to schedule a time for the telephone interview. I am available any day this week.

Thanks.

Benjamin M. Halpern 212-336-8095( phone) 212-336-8001 (fax)

This transmission is intended only for the party to whom it is addressed and may contain privileged or confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination or copying of this transmission is prohibited. If you received this transmission in error, please notify us immediately by telephone and return this transmission and any copies to us by mail. For missing or illegible pages please call the fax operator at 212-336-8000.

## U.S. PATENT APPLICATION SERIAL NO. 10/942,326 AGENDA FOR EXAMINER INTERVIEW

The following is an agenda for the telephone interview to be conducted by Applicant's representative with Examiner Huson:

- 1. Applicant suggests amending the claims to emphasize that the claimed toy has a uniform cross section along its entire length when in the contracted configuration. None of the applied references teach this feature. Sands, for example, discloses a toy water gun having numerous protrusions along its length, particularly at the longitudinal end portions. The uniform cross section allows the inventive toy to take on the appearance of a "swimming noodle".
- 2. Applicant also suggests amending the claims to recite that the soft material that encases the toy extends across the entire length of the toy. The soft material provides both buoyancy and protection from injury. None of the applied references teach this feature. Henderson, for example, teaches the use of a foam rubber handle 28, but the foam rubber is only disposed at one end of the toy. Thus, the whipping action of the Henderson toy is particularly dangerous, since the end to be whipped is not encased in a soft material.

The Applicant is willing to submit one or both of the above-suggested amendments to further distinguish from the applied references. Any other suggestions by the Examiner would of course be appreciated.

After reviewing this agenda, Examiner Huson is kindly requested to contact Applicant's representative to schedule a time for the telephone interview.

372036.1

Case 1:08-cv-02909-NRB Document 12-8 Filed 08/20/2008 Page 16 of 48

TFW



Application No.: 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725790167 US

Date of Deposit: July 10, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450.

Name: Vivian Campbell
Signature:

#### SUPPLEMENTAL AMENDMENT

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Further to the Amendment filed June 15, 2007, and further in response to the Office Action mailed March 30, 2007, please amend the above-identified application as follows:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

#### Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

#### **Listing of Claims:**

- 1. (canceled)
- 2. (canceled)
- 3. (canceled)
- 4. (canceled)
- 5. (currently amended) An expandable and contractible toy for receiving and storing water when disposed towards an expanded configuration, and squirting water when disposed towards a contracted configuration, the toy being encased in a soft material along substantially-its entire length when in the contracted configuration, the soft material having a buoyancy sufficient to keep the toy afloat in water when the toy is filled to its maximum capacity with water, the toy having a cylinder shape and a uniform cross section along substantially-its entire length when in the contracted configuration.
- 6. (original) The toy of claim 5 wherein said soft material is closed-cell polymer foam.
- 7. (previously presented) The toy of claim 5 wherein said material is closed-cell polyethylene foam.
- 8. (previously presented) The toy of claim 5 wherein said material is closed-cell ethylene

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

vinyl acetate foam.

- 9. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, the outer shell covering substantially the entire tubular housing from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section along substantially-its entire length when said chamber is fully contracted.
- 10. (original) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 11. (original) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 12. (original) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 13. (original) The toy of claim 9 wherein said chamber comprises a cylinder and said means for expansion and contraction of said chamber is a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber.

Appl. No. 10/942,326

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

14. (canceled)

- 15. (previously presented) The toy of claim 9 wherein said soft material is closed-cell polymer foam.
- 16. (previously presented) The toy of claim 9 wherein said material is closed-cell polyethylene foam.
- 17. (previously presented) The toy of claim 9 wherein said material is closed-cell ethylene vinyl acetate foam.
- 18. (currently amended) A toy for receiving, storing, and squirting water and comprising a tubular housing defining a chamber for receiving and storing the water, said tubular housing having a first end and a second end, said chamber having means for expansion or contraction and said housing having a hole to allow communication between said chamber and the outside environment, whereby said toy is adapted to inhale the water through said hole while said hole is submerged during said expansion of said chamber, and said toy is adapted to exhale the water through said hole during said contraction of said chamber, and further comprising an outer shell comprised of a soft material that has a buoyancy sufficient to keep the toy afloat in water when said expanded chamber is full of water, said outer shell covering the tubular housing from adjacent the first end to adjacent the second end, said chamber comprising a cylinder and said means for expansion and contraction of said chamber being a piston sealingly engaging said chamber's interior cylindrical surface, said piston adapted for longitudinal movement within and relative to said cylinder to alternately expand and contract the volume within the chamber, said tubular housing having a uniform cross-section substantially along its entire length when said chamber is fully contracted.

Case 1:08-cv-02909-NRB Document 12-8 Filed 08/20/2008 Page 20 of 48

Appl. No. 10/942,326

. No. 10/ 942,320

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

**REMARKS** 

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are

amended.

The amendments presented herein are made in response to the telephone

interview conducted on July 3, 2007 between Applicant's representative and Examiner

Huson. The present amendments remove the term "substantially" from the claims to

overcome the current claim rejections and are made without prejudice to Applicant's

potential pursuit of patent protection based on claims directed to the present invention

which include the term "substantially".

Applicant respectfully requests that a timely Notice of Allowance be issued in this

case.

If any further fees are required to preserve the pendency of the subject

application, please debit Deposit Account No. 01-1785. Likewise, if there is

overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

**Attorneys for Applicants** 

90 Park Avenue

New York, NY 10016

(212) 336-8000

Dated: New York, New York

July 10, 2007

Renjamin M. Halpern

Registration No.: 46,494

Page 5 of 5

File Wrapper '642 Patent Page 74

374511.1

Case 1:08-cv-02909-NRB Document 12-8 Filed 08/20/2008 Page 21 of 48

Appl. No. 10/942,326

, NO. 10/942,320

Amdt. Filed on July 10, 2007 In Response to

Office Action mailed 3/30/07

#### **REMARKS**

Claims 5-13 and 15-18 are pending. By this Amendment, claims 5, 9 and 18 are amended.

The amendments presented herein are made in response to the telephone interview conducted on July 3, 2007 between Applicant's representative and Examiner Huson. The present amendments remove the term "substantially" from the claims to overcome the current claim rejections and are made without prejudice to Applicant's potential pursuit of patent protection based on claims directed to the present invention which include the term "substantially".

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any further fees are required to preserve the pendency of the subject application, please debit Deposit Account No. 01-1785. Likewise, if there is overpayment, please credit the same account. Enclosed is a copy of this document.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicants 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

July 10, 2007

Benjamin M. Halpern

Registration No.: 46,494

PTO/SB/06 (07-06)

Approved for use through 1/31/2007. OMB 0651-0032 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Application or Docket Number Filing Date PATENT APPLICATION FEE DETERMINATION RECORD 10/942.326 09/16/2004 To be Mailed Substitute for Form PTO-875 APPLICATION AS FILED - PART I OTHER THAN SMALL ENTITY SMALL ENTITY (Column 1) (Column 2) OR FOR NUMBER FILED NUMBER EXTRA RATE (\$) FEE (\$) RATE (\$) FEE (\$) BASIC FEE N/A N/A N/A N/A SEARCH FEE N/A N/A N/A N/A (37 CFR 1.16(k) **EXAMINATION FEE** N/A N/A N/A N/A (37 CFR 1.16(o), (p), or (q) TOTAL CLAIMS minus 20 = X \$ OR X \$ (37 CFR 1.16(i)) INDEPENDENT CLAIMS = = minus 3 = X \$ X \$ If the specification and drawings exceed 100 sheets of paper, the application size fee due ☐ APPLICATION SIZE FEE is \$250 (\$125 for small entity) for each (37 CFR 1.16(s)) additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s) MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j)) \* If the difference in column 1 is less than zero, enter "0" in column 2. **TOTAL TOTAL** APPLICATION AS AMENDED - PART II OTHER THAN SMALL ENTITY (Column 1) SMALL ENTITY OR (Column 2) (Column 3) CLAIMS HIGHES1 REMAINING PRESENT ADDITIONAL ADDITIONAL NUMBER

**FXTRA** 

= 0

= 0

RATE (\$)

X \$25 =

X \$100 =

TOTAL

ADD'L

ADD'L

FEE

FFF (\$)

0

0

0

		(Column 1)		(Column 2)	(Column 3)		
L		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		
AMENDMENT	Total (37 CFR 1.16(i))	*	Minus	**	=		
DM	Independent (37 CFR 1.16(h))			***	=		
H E N	Application Size Fee (37 CFR 1.16(s))						
AM	FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1,16(i))						

Minus

Minus

FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))

07/10/2007

Total (37 CFR

Independent (37 CFR 1.16(h))

AMENDMENT

**AFTFR** 

\* 13

\* 3

Application Size Fee (37 CFR 1.16(s))

**AMENDMENT** 

	RATE (\$)	ADDITIONAL FEE (\$)		RATE (\$)	ADDITIONAL FEE (\$)
	x \$ =		OR	x \$ =	
	x \$ =		OR	x \$ =	
			OR		
•	TOTAL		'	TOTAL	

OR

OR

OR

OR

RATE (\$)

X \$

X \$

TOTAL

ADD'L

FFF (\$)

peggy s. yarborough

Legal Instrument Examiner:

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1

**PREVIOUSLY** 

PAID FOR

\*\* 20

\*\*\*3

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS

ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

ADD'L **FEE** 

<sup>\*</sup> If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

<sup>\*\*</sup> If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

<sup>\*\*\*</sup> If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

JUL 1 2 2007 W

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/942,326

Confirmation No. 9683

"Express Mail" mailing label No. EV 725835637 US

I hereby certify that this paper or fee is being deposited with the United States Postal Service

"Express Mail" service under 37 CFR 1.10 on the date

Commissioner for Patents, P.O. Box 1450, Alexandria,

Date of Deposit: July 12, 2007

VA 22313-1450. Name: Vivian Cam Signature:

indicated above and is addressed to the

Inventor

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3751

Examiner

: Mahone, Kristie Annette

Docket No.

: 69281/54

Customer No.

: 1912

#### INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22323-1450

Sir:

Applicant respectfully requests pursuant to 37 C.F.R. §§§ 1.56, 1.97 and 1.98, that the reference listed on the attached PTO/SB/08A Form (Substitute Form for PTO-1449) be considered and cited in the examination of the above-identified patent application. The reference is cited in the International Search Report dated May 8, 2007 (copy attached) of the International Application No. PCT/US05/17102 (69281/51).

No item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a

Information Disclosure Statement dated July 12, 2007

counter-part foreign application not more than three months prior to the filing of this statement.

We hereby authorize you to charge the \$180.00 fee for the filing of this Information Disclosure Statement to our deposit Account No. 01-1785. A copy of this document is enclosed.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP Attorneys for Applicant(s) 90 Park Avenue New York, NY 10016 (212) 336-8000

Dated: New York, New York

July 12, 2007

Benjamin M. Halpern

Registration No.: 46,494

Examiner Name

Approved for use through 09/30/2007. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE laber the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. Complete if Known ubstitute for form 1449/PTO Application Number 10/942,326 FENT & THA September 16, 2004 Filing Date INFORMATION DISCLOSURE First Named Inventor Boguslaw Orlowski STATEMENT BY APPLICANT Art Unit 3751 (Use as many sheets as necessary)

Sheet	1	_of 1		Attorney Docket Number	69281/54
			U.S. PATEN	DOCUMENTS	
Examiner Cite No.1		Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Docum	
		Number-Kind Code <sup>2 (# known)</sup> US- 4,615,488	10-07-1986	Sands	i iguies Appeal
		US-	10-07-1900	Carlos	
<del></del>		US-	_		
		US-			

	FOREIGN PATENT DOCUMENTS								
Examiner Initials*	Cite No.1	Foreign Patent Document	Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages				
		Country Code <sup>3 "</sup> Number <sup>4 "</sup> Kind Code <sup>5</sup> (if known)	MM-DD-YYYY		Or Relevant Figures Appear	T <sup>6</sup>			
		Int'l Search Report	05-08-2007						
						_			
						-			
						<u> </u>			
			1		1	l			

Examiner	Date	
Signature	Considered	
	i	

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup>Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup>Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup>Applicant is to place a check mark here if English language Translation is attached.

Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

PTO/SB/08A (04-07)

Mahone, Kristie Annette

#### United States Patent and Trademark Office

Case 1:08-cv-02909-NRB

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/942,326	09/16/2004	Boguslaw Orlowski	69281/54 9683		
1912 AMSTER RO	7590 07/16/200 THSTEIN & EBENST	EXAMINER			
90 PARK AVE	ENUE	DII  DDI	MAHONE, KRISTIE ANNETTE		
NEW YORK, NY 10016			ART UNIT	PAPER NUMBER	
		·	3751		
			MAIL DATE	DELIVERY MODE	
			07/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Case 1:08-cv-02909-NRB Documer	nt 12-8 Filed 08/20/2008 Application No.	B Page 27 of 48 Applicant(s)
Advisory Action	10/942,326	ORLOWSKI, BOGUSLAW
Before the Filing of an Appeal Brief	Examiner	Art Unit
20.0.0 and thing or an appear area		3751
	Kristie A. Mahone	
The MAILING DATE of this communication appe		
THE REPLY FILED <u>16 June 2007</u> FAILS TO PLACE THIS APF		
1.  The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliant time periods:	wing replies: (1) an amendment, aff ptice of Appeal (with appeal fee) in o ce with 37 CFR 1.114. The reply mu	idavit, or other evidence, which compliance with 37 CFR 41.31; or (3)
a) The period for reply expires 3 months from the mailing date		in the final rejection, whichever in leter. In
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire	Advisory Action, or (2) the date set forth later than SIX MONTHS from the mailin	g date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP 7	(b). ONLY CHECK BOX (b) WHEN THE	
Extensions of time may be obtained under 37 CFR 1.136(a). The date nave been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	tension and the corresponding amount shortened statutory period for reply orig r than three months after the mailing da ).	of the fee. The appropriate extension fee inally set in the final Office action; or (2) as te of the final rejection, even if timely filed,
<ol> <li>The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter a Notice of Appeal has been filed, any reply must be filed</li> </ol>	ension thereof (37 CFR 41.37(e)), to	avoid dismissal of the appeal. Since
AMENDMENTS		
3. The proposed amendment(s) filed after a final rejection,		
(a) They raise new issues that would require further co		I E below);
<ul> <li>(b) ☐ They raise the issue of new matter (see NOTE below)</li> <li>(c) ☐ They are not deemed to place the application in be</li> </ul>		ducing or simplifying the issues for
appeal; and/or (d) ☐ They present additional claims without canceling a	corresponding number of finally rei	ected claims.
NOTE: . (See 37 CFR 1.116 and 41.33(a)).		
4. The amendments are not in compliance with 37 CFR 1.1		ompliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s		
<ol> <li>Newly proposed or amended claim(s) would be a non-allowable claim(s).</li> </ol>	llowable if submitted in a separate,	timely filed amendment canceling the
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to:	⊠ will not be entered, or b) ☐ wi vided below or appended.	ill be entered and an explanation of
Claim(s) rejected:		
Claim(s) withdrawn from consideration:		
AFFIDAVIT OR OTHER EVIDENCE	A STATE OF THE STA	
<ol> <li>The affidavit or other evidence filed after a final action, be because applicant failed to provide a showing of good ar was not earlier presented. See 37 CFR 1.116(e).</li> </ol>	nd sufficient reasons why the affida	vit or other evidence is necessary and
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessar	overcome all rejections under appe	al and/or appellant fails to provide a
10.   The affidavit or other evidence is entered. An explanation		

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

Sec attacked information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

**GREGORY HUSON** SUPERVISORY PATENT EXAMINER **TECHNOLOGY CENTER 3700** 

13. Other: \_\_\_\_.

Case 1:08-cv-02909-NRB Document 1	2-8 Filed 08/20/2008	Page 28 of 48
	Application No.	Applicant(s)
Examiner-Initiated Interview Summary	10/942,326	ORLOWSKI, BOGUSLAW
Lanniner-initiated interview Summary	Examiner	Art Unit
•	Kristie A. Mahone	3751
All Participants:	Status of Application: After	er Final
(1) <u>Kristie A. Mahone</u> .	(3) <u>Benjamin Halpern</u> .	
(2) <u>Gregory L. Huson</u> .	(4)	
Date of Interview: 3 July 2007	Time: <u>12:00 P. M.</u>	
Type of Interview:  ☐ Telephonic ☐ Video Conference ☐ Personal (Copy given to: ☐ Applicant  Exhibit Shown or Demonstrated: ☐ Yes ☐ No If Yes, provide a brief description:	nt's representative)	
Part I.		
Rejection(s) discussed:		
Claims discussed: 5-13, 15-18		
Prior art documents discussed: of record, as applied		
Part II.		
SUBSTANCE OF INTERVIEW DESCRIBING THE GENER See Continuation Sheet	RAL NATURE OF WHAT WAS	B DISCUSSED:
Part III.	•	
<ul> <li>It is not necessary for applicant to provide a separate redirectly resulted in the allowance of the application. The of the interview in the Notice of Allowability.</li> <li>It is not necessary for applicant to provide a separate redid not result in resolution of all issues. A brief summary</li> </ul>	e examiner will provide a writte ecord of the substance of the	en summary of the substance interview, since the interview
Kly Ym		
(Examiner/SPE Signature) (Applicant)	'Applicant's Representative Si	gnature – if appropriate)

Ε

Continuation of Substance of Interview including description of the general nature of what was discussed: Examiner proposed elimination of the term "substantially" from the independent claims to parrallel the claim language previously offered by Applicant's attorney (See Paper No. 20070512). It was explained that the term "substantially" could be interpreted as 50% or more of the entire length. No agreement was reached in this regard. An advisory action will be mailed. .

## **EAST Search History**

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L2	499	(222/79).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:32
L3	32	(222/79).CCLS.	US-PGPUB	OR	OFF -	2007/07/30 10:32
L5	1103	(222/409).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:33
L6	0	(222/409).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:33
L7	363	(446/153).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	.OR	OFF	2007/07/30 10:34
L8	34	(446/153).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:34
L9	289	(446/473).CCLS.	 US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:34
L10	10	(446/473).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:35
L13	307	(482/55).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:36
L14	31	(482/55).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:36
L15	298	(482/111).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:36

File Wrapper '642 Patent Page 8Page 1

## **EAST Search History**

						· · · · · · · · · · · · · · · · · · ·
L16	20	(482/111).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:37
L17	0	(92/249).CCLS.	US-PGPUB	OR	OFF	2007/07/30 10:37
L18	526	(92/249).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:42
L19	0	("(L3L6L8L10L14L16L17)AND((toyg un)ANDbouyan\$2cylinder)").PN.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2007/07/30 10:44
L20	0	(L3 L6 L8 L10 L14 L16 L17) AND((toy gun) AND bouyan\$2 AND cylinder).CLM.	US-PGPUB	OR	OFF	2007/07/30 10:45
L21	0	(L3 L6 L8 L10 L14 L16 L17) AND (bouyan\$2 AND cylinder).CLM.	US-PGPUB	OR .	OFF .	2007/07/30 10:46
L22	0	(L3 L6 L8 L10 L14 L16 L17) AND ( bouyan\$2 AND (toy gun)).CLM.	US-PGPUB	OR	OFF	2007/07/30 10:46

File Wrapper '642 Patent Page 8<sup>gage 2</sup>



#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

#### NOTICE OF ALLOWANCE AND FEE(S) DUE

1912

7590

08/03/2007

AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 EXAMINER

MAHONE, KRISTIE ANNETTE

ART UNIT

PAPER NUMBER

2751

DATE MAILED: 08/03/2007

1	·			· · ·	
ş) (	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
	10/942,326	09/16/2004	Boguslaw Orlowski	69281/54	9683

TITLE OF INVENTION: SQUIRTING TOY

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$700	\$300	\$0	\$1000	11/05/2007

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

#### HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2, the ISSUE FEE shown above.

PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (FSPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a required to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees.

Page 86

#### Page 33 of 48

Complete and send this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax
(571)-273-2885

! mai	TRUCTIONS: This opriate. All further cated unless correct tenance fee notifica	ed below or directed oth	or transmitting the ISSU g the Patent, advance of erwise in Block I, by (a	JE FEE and PUBLICATI rders and notification of n a) specifying a new corres	ON FEE (if requirements of the contract of the	red). Blocks I through 5 ill be mailed to the currer and/or (b) indicating a se	should be completed where at correspondence address as parate "FEE ADDRESS" for	
V C		ENCE ADDRESS (Note: Use Bl		Fee(	s) Transmittal. This ers. Each additional	s certificate cannot be used	for domestic mailings of the for any other accompanying tent or formal drawing, must	
	1912 AMSTER, RO 90 PARK AVEN NEW YORK, N			I he Stat addi tran:	Cert reby certify that thi es Postal Service w essed to the Mail smitted to the USPT	ificate of Mailing or Trans s Fee(s) Transmittal is bein ith sufficient postage for finance Stop ISSUE FEE addres O (571) 273-2885, on the	nsmission  ng deposited with the United irst class mail in an envelope s above, or being facsimile date indicated below.	
			•				(Depositor's name)	
<u>.</u>				<u> </u>	···		(Signature)	
							(Date)	
	APPLICATION NO.	FILING DATE		FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.	CONFIRMATION NO.	
)	10/942,326	09/16/2004		Boguslaw Orlowski		69281/54	9683	
NAME OF THE PERSON OF THE PERS		: SQUIRTING TOY		<b>.</b>				
end G	APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE	FEE TOTAL FEE(S) DU	E DATE DUE	
ŢV	nonprovisional	YES	\$700	\$300	\$0	\$1000	11/05/2007	
	EXAM	IINER	ART UNIT	CLASS-SUBCLASS				
	MAHONE, KRI	STIE ANNETTE	3751	222-079000				
CFR A	1.363).  Change of correspuddress form PTO/Si  "Fee Address" ind	ence address or indication condence address (or Cha B/122) attached. lication (or "Fee Address' )2 or more recent) attach	nge of Correspondence	2. For printing on the patent front page, list  (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,  (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.				
Pro ()	LEASE NOTE: Un ecordation as set fort A) NAME OF ASSI se check the appropr	less an assignee is ident h in 37 CFR 3.11. Comp GNEE riate assignee category or	ified below, no assignee letion of this form is NO	(B) RESIDENCE: (CITY	atent. If an assigne assignment. and STATE OR Co	OUNTRY)	document has been filed for	
	The following fcc(s)  Issue Fee Publication Fee (N	are submitted: No small entity discount p	4t	b. Payment of Fee(s): (Plea A check is enclosed. Payment by credit car	se first reapply an  d. Form PTO-2038 authorized to chars	y previously paid issue fe  is attached.	e shown above)	
	a. Applicant claim	tus (from status indicated as SMALL ENTITY statu	s. See 37 CFR 1.27.	☐ b. Applicant is no long	ger claiming SMAL	L ENTITY status. See 37	CFR 1.27(g)(2).	
NOT inter	E: The Issue Fee an est as shown by the	d Publication Fee (if requeecords of the United Sta	ured) will not be accepted tes Patent and Trademark	d from anyone other than to Office.	ne applicant; a regis	stered attorney or agent; or	the assignee or other party in	
A	uthorized Signature		,		Date	,		
2.		e				0		
Alex	andria, Virginia 223	313-1450.	NOT SEND FEES OR	COMPLETED FORMS TO	I I II I S ADDRESS	ne public which is to file (a ninutes to complete, includ mments on the amount of frademark Office, U.S. De . SEND TO: Commissione	ind by the USPTO to process) ing gathering, preparing, and time you require to complete partment of Commerce, P.O. r for Patents, P.O. Box 1450,	

PTOL-85 (Rev. 08/07) Approved for use through 08/31/2007.

Page 87



#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.			
10/942,326 09/16/2004		Boguslaw Orlowski	69281/54	9683			
	590 . 08/03/2007		EXAM	IINER			
AMSTER, ROTI	HSTEIN & EBENST	EIN LLP	MAHONE, KRISTIE ANNETTE				
90 PARK AVENU	JE		ART UNIT	PAPER NUMBER			
NEW YORK, NY	10016		3751	<del></del>			
			DATE MAILED: 08/03/200	7			

#### Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 219 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 219 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

File Wrapper '642 Patent Page 88

•	Application No.	Applicant(s)	
A1 (1	10/942,326	ORLOWSKI, BOGU	SLAW
Notice of Allowability	Examiner	Art Unit	
	Kristie A. Mahone	3751	
The MAILING DATE of this communication appeal claims being allowable, PROSECUTION ON THE MERITS IS therewith (or previously mailed), a Notice of Allowance (PTOL-85) NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT Report the Office or upon petition by the applicant. See 37 CFR 1.313	(OR REMAINS) CLOSED in this apply or other appropriate communication IGHTS. This application is subject to 3 and MPEP 1308.	olication. If not include will be mailed in due	ed course. <b>THIS</b>
1. $igotimes$ This communication is responsive to <u>Supplemental Amend</u>	dment, filed 7/10/2007.		
2. ☑ The allowed claim(s) is/are <u>5-13;15-18</u> .			
Acknowledgment is made of a claim for foreign priority una)  All b) Some* c) None of the:  1. Certified copies of the priority documents have 2. Certified copies of the priority documents have 3. Copies of the certified copies of the priority documents have International Bureau (PCT Rule 17.2(a)).  * Certified copies not received:  Applicant has THREE MONTHS FROM THE "MAILING DATE" noted below. Failure to timely comply will result in ABANDONN THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.  4. A SUBSTITUTE OATH OR DECLARATION must be submin INFORMAL PATENT APPLICATION (PTO-152) which gives 1. Corrected DRAWINGS (as "replacement sheets") must be comply including changes required by the Notice of Draftsperior.	e been received. e been received in Application No cuments have been received in this of this communication to file a reply MENT of this application.  nitted. Note the attached EXAMINER res reason(s) why the oath or declara	national stage application complying with the read and a second complying with the read at the complex complex constants.	quirements
(a) including changes required by the Notice of Draisper  1) hereto or 2) to Paper No./Mail Date  (b) including changes required by the attached Examiner  Paper No./Mail Date  Identifying indicia such as the application number (see 37 CFR each sheet. Replacement sheet(s) should be labeled as such in	_· 's Amendment / Comment or in the C 1.84(c)) should be written on the drawi	Office action of	e back) of
<ol> <li>DEPOSIT OF and/or INFORMATION about the deposit attached Examiner's comment regarding REQUIREMENT</li> </ol>	OSIT OF BIOLOGICAL MATERIAL I FOR THE DEPOSIT OF BIOLOGIC	must be submitted. AL MATERIAL.	Note the
<ul> <li>Attachment(s)</li> <li>1. ☐ Notice of References Cited (PTO-892)</li> <li>2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)</li> <li>3. ☐ Information Disclosure Statements (PTO/SB/08),</li></ul>	5. Notice of Informal F 6. Interview Summary Paper No./Mail Da 7. Examiner's Amenda 8. Examiner's Statem 9. Other	r (PTO-413), ite ment/Comment	lowance
	SI	GREGORY HUS JPERVISORY PATENT WECHNOLOGY CENT	EXAMINER



### UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

#### **BIB DATA SHEET**

#### **CONFIRMATION NO. 9683**

				1				Y		
SERIAL NUM	BER	FILING OI			CLASS	GROUP ART	UNIT	ATTORNEY DOCKET		
10/942,32	26	09/16/2	_		239	3751			69281/54	
		RUL	E					<u> </u>		
APPLICANT Boguslav	_	ski, Oceansid	le, CA;							
** CONTINUIN	G DAT	A ********	*****	*						
** FOREIGN A	PPLICA	ATIONS *****	******	*****	*					
** <b>IF REQUIRE</b> 11/02/20		REIGN FILING	S LICENS	E GRA	ANTED ** ** SMA	LL ENTITY **				
Foreign Priority claim		Yes No			STATE OR	SHEETS	TOT		INDEPENDENT	
35 USC 119(a-d) con Verified and	ditions met	•	Met af Allowa KAM		COUNTRY	DRAWINGS	CLAI	_	CLAIMS	
	MAHONE/ Examiner's		Initials		CA	4	17 		3	
ADDRESS			·		•	· · · · · · · · · · · · · · · · · · ·		-		
AMSTER 90 PARK NEW YO UNITED	ÁVENI RK, NY	10016	ENSTEIN	LLP						
TITLE						The III		•	***************************************	
Squirting	toy									
						☐ All Fe	es			
						☐ 1.16 I	Fees (Fil	ing)		
FILING FEE		Authority has	_		'aper EPOSIT ACCOUI	UT □ 1.17 F	ees (Pr	ocess	ing Ext. of time)	
RECEIVED 385		to			EPOSIT ACCOU	1.18 [	ees (Iss	sue)		
						☐ Other				
			•			☐ Credi				

Case 1:08-cv-02909-NRB Document 12-8 Filed 08/20/2008 Page 37 of 48

Application/Control No. Applicant(s)/Patent under

10/942,326

Reexamination

ORLOWSKI, BOGUSLAW

Examiner Kristie A. Mahone

Art Unit 3751

ISS	ue Ci	iassit	ication	

		ORIGINAL		ISSUE	T					CLASSIFICATION		
	CLASS	ONIGINAL	SUBCL	.ASS			CI	.AIMED			N-CLAIMED	
	222		79	)	Α	63	н	3	/18			1
	CROS	S REFEREN	CES		G	01	F	11	/00			
CLASS	SUBCLA	SS (ONE SU	BCLASS PE	R BLOCK)								
222	409				Α	62	c	31	/02			1
239	394								1			1
									1			1
									1			1
									1			1
		none 8/6/0		Gregr	ov I	Huse	on 8	/6/07		Total Claims A	llowed: 1	3
Nicole Scrivner 8/6/07 (Primary I					*		J11 0/	(Date)	O.G. Print Claim(s)			O.G. Print Fig
(Legal Instruments Examiner) (Date)					ł				5			4

⊠ c	laims	renur	nbere	d in th	e sam	e orde	er as p	resen	ted by	appli	cant	□c	PA		□ T.	D.		☐ R.	1.47
Final	Original		Final	Original		Final	Original		Final	Original		Final	Original		Final	Original		Final	Original
								<u> </u>  -											
	<del></del>						-												
								<u> </u>   											
	-																		
														File V	Vran	a a r ! (	:40 F	latan	4
														riie v				aten ge 9	

Index	of	CI	lai	ms
-------	----	----	-----	----



Application/Control No.	Applicant(s)/Patent Under Reexamination
10942326	ORLOWSKI, BOGUSLAW
Examiner	Art Unit
Mahone, Kristie A	3751

✓	Rejected
11	Allowed

-	Cancelled
÷	Restricted

N	Non-Elected
ı	Interference

Α	Appeal
0	Objected

		in the same ord	· · · · · · · · · · · · · · · · · · ·				☐ CPA	T		
CL	MIA	DATE								
Final	Original	07/30/2007								
	1	-								
	2									
	3	-								
	4	-								
-	5	=				***				
	6	=							1	1
	7	=								
	8	=								
	9	=								
	10	=			<u></u>					
	11	=								
	12	=								
	13	=							<u> </u>	
	14	-								
	15	=								
	16	=								
	17	=			_					

Search Notes	

Application/Control No.	Applicant(s)/Patent Under Reexamination
10942326	ORLOWSKI, BOGUSLAW
Examiner	Art Unit
Mahone, Kristie A	3751

SEARCHED						
Class	Subclass	Date	Examiner			
222	79,409	7/30/2007	KAM			
446	153,473	7/30/2007	KAM			
482	55,111	7/30/2007	KAM			
92	249	7/30/2007	KAM			

SEARCH NOTES						
Search Notes	Date	Examiner				
Updated Original Search	7/30/2007	KAM				

	INTERFERENCE SE	EARCH	
Class	Subclass	Date	Examiner
222	79,409	7/30/2007	KAM
446	153,473	7/30/2007	KAM
482	55,111	7/30/2007	KAM
92	249	7/30/2007	KAM



#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/942,326

Confirmation No. 9683

**Applicants** 

: Boguslaw Orlowski

Filed

: September 16, 2004

TC/A.U.

: 3764

Examiner

: Huson, Gregory L.

Docket No.

: 69281/54

Customer No.

: 1912

"Express Mail" mailing label No. EV 725790167 US July 10, 2007 Date of Deposit:

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA

Name:

Signature:

#### SUPPLEMENTAL AMENDMENT

Mail Stop AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Office Action mailed March 30, 2007, please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on

page 2 of this paper.

Remarks begin on page 5 of this paper.

PART B - FEE(S) TRANSMITTAL Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 or Fax (571)-273-2885 INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks I through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block I, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for distributions for patifications. diffaintenance fee notifications Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying CURRENT CORRESPONDENCE ADDRESS (Note: Use Block I for any change of address) papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission. 1912 7590 08/03/2007 Certificate of Mailing or Transmission AMSTER, ROTHSTEIN & EBENSTEIN LLP I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below. 90 PARK AVENUE NEW YORK, NY 10016 (Depositor's name (Signature) (Date) APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/942,326 09/16/2004 Boguslaw Orlowski 69281/54 9683 TITLE OF INVENTION: SQUIRTING TOY ะกป APPLN TYPE SMALL ENTITY ISSUE FEE DUE **PUBLICATION FEE DUE** PREV. PAID ISSUE FEE TOTAL FEE(S) DUE DATE DUE nonprovisional YES \$700 \$300 \$0 \$1000 11/05/2007 EXAMINER ART UNIT CLASS-SUBCLASS MAHONE, KRISTIE ANNETTE 3751 222-079000 1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). 2. For printing on the patent front page, list AMSTER, ROTHSTEIN & (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached. 2 EBENSTEIN (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to Tree Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required. 2 registered patent attorneys or agents. If no name is listed, no name will be printed. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type) PLEASE NOTE: Unless an assignce is identified below, no assignce data will appear on the patent. If an assignce is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment. (A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY) Prime Time Toys, Ltd. Kwun Tong, Hong Kong Misse check the appropriate assignee category or categories (will not be printed on the patent) : 🔲 Individual 🛣 Corporation or other private group entity 🚨 Government The following fee(s) are submitted: 4b. Payment of Fec(s): (Please first reapply any previously paid issue fee shown above) Issue Fee A check is enclosed. 2 Publication Fee (No small entity discount permitted) Payment by credit card. Form PTO-2038 is attached. Advance Order - # of Copies The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 01-1785 (enclose an extra copy of this form). 5. Change in Entity Status (from status indicated above) a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2). NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office. /Michael P. Kenney/ August 14, 2007 Authorized Signature Michael P. Kenney, Esq. Typed or printed name Registration No: 42,718

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process); an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. F

File Wrapper '642 Patent

Electronic Patent Application Fee Transmittal							
Application Number:	10	942326					
Filing Date:	16	-Sep-2004					
Title of Invention:	SO	QUIRTING TOY					
First Named Inventor/Applicant Name:	Вс	guslaw Orlowski					
Filer:	Mi	chael Kenney					
Attorney Docket Number:	69281/54						
Filed as Small Entity							
Utility Filing Fees							
Description		Fee Code	Quantity	Amount	Sub-Total in USD(\$)		
Basic Filing:							
Pages:							
Claims:							
Miscellaneous-Filing:							
Petition:							
Patent-Appeals-and-Interference:							
Post-Allowance-and-Post-Issuance:							
Utility Appl issue fee		2501	1 Eile	700	700		
Publ. Fee- early, voluntary, or normal		1504	1	<del>2 Wrapper '64</del> 300	Page 960		

Case 1:08-cv-02909-NRB Description	Document	12-8 Filed Fee Code	08/20/200 Quantity	Page 43 Amount	of 48 Sub-Total in USD(\$)
Extension-of-Time:					
Miscellaneous:					
		Tota	al in USD	(\$)	1000

Case 1:08-cv-02909-NRB Document 12-8 Filed 08/20/2008 Page 44 of 48  Electronic Acknowledgement Receipt						
EFS ID:	2080582					
Application Number:	10942326					
International Application Number:						
Confirmation Number:	9683					
Title of Invention:	SQUIRTING TOY					
First Named Inventor/Applicant Name:	Boguslaw Orlowski					
Customer Number:	1912					
Filer:	Michael Kenney					
Filer Authorized By:						
Attorney Docket Number:	69281/54					
Receipt Date:	14-AUG-2007					
Filing Date:	16-SEP-2004					
Time Stamp:	15:07:41					
Application Type:	Utility under 35 USC 111(a)					

## Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$1000
RAM confirmation Number	355
Deposit Account	011785

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17

File Listing:

File Wrapper '642 Patent Page 98

Document Number	ase 1:08-cv-02909-NRB Doc Document Description	rument 12-8 Filed 08 File Name	/20/2008 /Message Digest	<sup>45</sup> Mนี้เ <del>นื่</del> <sup>8</sup> Part /.zip	Pages (if appl.)
1	Issue Fee Payment (PTO-85B)	lssue_Fee_Squirting_Toy.pd	160590	no	1
'	issue ree rayillelii (F10-65b)	f	d4290b3322ebb58fd42838d8b6ee3ca9 6bbebdcc		ľ
Warnings:					
Information:					
2	Fee Worksheet (PTO-06)	fee-info.pdf	8242	no	2
	ree worksheer (r 10 00)	iee iiio.pai	5217f79fa530f0dc8fb2290deaffdb039c5 51bf1	110	_
Warnings:					
Information:					
		Total Files Size (in bytes):	16	58832	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

#### New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

#### National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

#### New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/08A (04-07) Approved for use through 09/30/2007. OMB 0651-0031 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE der the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. Complete if Known ubstitute for form 1449/PTO Application Number 10/942,326 ENT & TRA Filing Date September 16, 2004 INFORMATION DISCLOSURE First Named Inventor Boguslaw Orlowski STATEMENT BY APPLICANT Art Unit 3751 (Use as many sheets as necessary) Mahone, Kristie Annette **Examiner Name** Attorney Docket Number 69281/54 of 1 Sneet 1

Examiner Initials*	Cite No.1	Document Number  Number-Kind Code <sup>2 (f known)</sup>	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		<sup>LIS.</sup> 4,615,488	10-07-1980	Conds	·
		US-	-		
		US-			
		US-	-		
	<del>                                     </del>	US-			
		US-			
		US-	1		
		US-			
		US-			
		US-	1		•
		US-	<u> </u>		
····	<del> </del>	US-			

FOREIGN PATENT DOCUMENTS									
Examiner Initials*	Cite No.	Foreign Patent Document	Publication Date	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages				
		Country Code <sup>3</sup> "Number * "Kind Code <sup>8</sup> (if known)	MM-DD-YYYY		Or Relevant Figures Appear	י			
		Int'l Search Report	05-08-2007						
						L			
						L			
				<del></del>		Ļ			
	<u> </u>					L			
	I					L			

Examiner Signature	Date Consid	ered

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 509. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. Applicant's unique citation designation number (optional). See Kinds Codes of USPTO Patent Documents at <a href="https://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. Skind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

#### United States Patent and Trademark Office

09/26/2007

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO. ISSUE DATE PATENT NO. ATTORNEY DOCKET NO. CONFIRMATION NO.

10/942,326 10/16/2007 7281642 69281/54 9683

AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016

7590

1912

#### ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

#### **Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**

(application filed on or after May 29, 2000)

The Patent Term Adjustment is 219 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PAIR WEB site http://pair.uspto.gov for additional applicants):

Boguslaw Orlowski, Oceanside, CA;

J. Michael McMahon

♠ AO 120 (Rev. 3/04)

O

# Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

## REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been ▶ Patents or □ Trademarks: filed in the U.S. District Court Southern District of New York on the following DOCKET NO. DATE FILED U.S. DISTRICT COURT 03/06/2008 08cv2335 S.D.N.Y. **PLAINTIFF** DEFENDANT Prime Time Toys Ltd. Manley Toy Direct LLC, et al DATE OF PATENT PATENT OR HOLDER OF PATENT OR TRADEMARK TRADEMARK NO. OR TRADEMARK Prime Time Toys Ltd. 7281642 10/16/2007 2 2176591 07/28/1998 3 In the above—entitled case, the following patent(s)/ trademark(s) have been included: DATE INCLUDED **INCLUDED BY** ☐ Amendment ☐ Answer Cross Bill Other Pleading PATENT OR DATE OF PATENT HOLDER OF PATENT OR TRADEMARK TRADEMARK NO. OR TRADEMARK 3 In the above—entitled case, the following decision has been rendered or judgement issued: DECISION/JUDGEMENT CLERK (BY) DEPUTY CLERK DATE

JEH

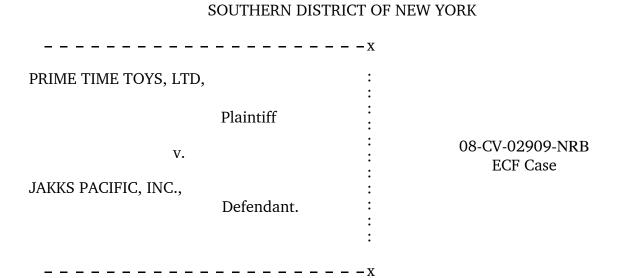
3/06/2008

**EXHIBIT D** 

UNITED STATES DISTRICT COURT

Neil M. Zipkin (NZ 4718) Chester Rothstein (CR 1417) David A. Boag (DB 9899) Amster, Rothstein & Ebenstein LLP 90 Park Avenue New York, New York 10016 (212) 336-8000

Attorneys for Plaintiff Prime Time Toys, Ltd.



#### **REPLY TO COUNTERCLAIM**

Prime Time Toys, Ltd. (hereinafter referred to as "PTT") answers the Counterclaim of Defendant Jakks Pacific, Inc. ("Jakks Pacific") as follows:

#### **JURISDICTION AND VENUE**

- 1. PTT admits the allegations of Paragraph 1 of the Counterclaim.
- 2. PTT admits the allegations of Paragraph 2 of the Counterclaim.
- 3. PTT admits the allegations of Paragraph 3 of the Counterclaim.
- 4. PTT admits the allegations of Paragraph 4 of the Counterclaim.

#### **BACKGROUND**

- 5. PTT admits the allegations of Paragraph 5 of the Counterclaim.
- 6. PTT admits that in a February 27, 2008 letter, Jakks Pacific made several arguments that it did not infringe any of the independent claims of the '642 Patent, but denies the remaining allegations of Paragraph 6 of the Counterclaim.
- 7. PTT admits that on or about March 25, 2008 counsel for PTT sent a letter to Jakks Pacific announcing that it had filed a suit for patent infringement, but denies the remaining allegations of Paragraph 7 of the Counterclaim.
- 8. PTT admits that on or about April 8, 2008, counsel for PTT received a letter from Jakks Pacific in which it made several arguments that it did not infringe any of the independent claims of the '642 Patent, but denies the remaining allegations of Paragraph 8 of the Counterclaim.
- 9. PTT admits that it did not provide a written response to the April 8, 2008 letter, but denies the remaining allegations of Paragraph 9 of the Counterclaim.
  - 10. PTT denies the allegations of Paragraph 10 of the Counterclaim.

#### **COUNT I**

- 11. PTT repeats its responses to Paragraphs 1 through 10 as if fully set forth herein.
- 12. PTT admits that the '642 Patent has three independent claims, but denies the remaining allegations of Paragraph 12 of the Counterclaim.
- 13. PTT admits that independent Claim 1 of the '642 Patent requires, in part, that the toy be "encased in the soft material along its entire length when in the contracted configuration," but denies the remaining allegations of Paragraph 13 of the Counterclaim.
  - 14. PTT denies the allegations of Paragraph 14 of the Counterclaim.
  - 15. PTT denies the allegations of Paragraph 15 of the Counterclaim.
  - 16. PTT admits that independent Claim 5 requires, in part, "an outer shell

covering the entire tubular housing from the first end to the second end to provide the toy with a cylinder shape, said tubular housing having a uniform cross-section along its entire length when said chamber is fully contracted," but denies the remaining allegations of Paragraph 16 of the Counterclaim.

- 17. PTT denies the allegations of Paragraph 17 of the Counterclaim.
- 18. PTT denies the allegations of Paragraph 18 of the Counterclaim.
- 19. PTT denies the allegations of Paragraph 19 of the Counterclaim.
- 20. PTT admits that in the remarks accompanying a June 15, 2007 Amendment, Applicant stated that: "although the Henderson Patent teaches the use of a foam rubber handle 28 on a toy that uses a whipping action to fling water, the handle is only disposed at one end of the toy, and not over substantially the entire length of the toy, as in the claimed invention." PTT denies the remaining allegations of Paragraph 20 of the Counterclaim.
- 21. PTT admits that in the June 15, 2007 Amendment, it amended application Claims 9 and 18 to require a "tubular housing having uniform cross-sections" along substantially the entire length when the chamber is fully contracted. PTT denies the remainder of the allegations in Paragraph 21 of the Counterclaim.
  - 22. PTT denies the allegations of Paragraph 22 of the Counterclaim.
  - 23. PTT denies the allegations of Paragraph 23 of the Counterclaim.
- 24. PTT admits that Claim 13 requires, in part, an "outer shell covering the tubular housing from adjacent the first end to adjacent the second end . . ." PTT denies the remainder of Paragraph 24 of the Counterclaim.
- 25. PTT admits that the specification of the '642 Patent discloses, in part, that "[t]ubular shell 138, preferably made of closed-cell polyethylene foam, surrounds tubular housing 106, to provide both a soft protective surface and buoyancy"; however, such disclosure is merely a preferred embodiment and does not limit the scope of the claims. PTT denies the remainder of Paragraph 25 of the Counterclaim.

404241.1

- 26. PTT denies the allegations of Paragraph 26 of the Counterclaim.
- 27. PTT denies the allegations of Paragraph 27 of the Counterclaim.
- 28. PTT denies the allegations of Paragraph 28 of the Counterclaim.
- 29. PTT denies the allegations of Paragraph 29 of the Counterclaim.
- 30. PTT denies the allegations of Paragraph 30 of the Counterclaim.
- 31. PTT denies the allegations of Paragraph 31 of the Counterclaim.

## **COUNT TWO**

- 32. PTT repeats its responses to Paragraphs 1 to 31 of the Counterclaim as if set forth fully herein.
  - 33. PTT denies the allegations of Paragraph 33 of the Counterclaim.
  - 34. PTT denies the allegations of Paragraph 34 of the Counterclaim.

#### AFFIRMATIVE DEFENSES

For its further and separate defenses to the Counterclaim, PTT alleges as follows:

1. Jakks Pacific's Counterclaims fail to state a claim upon which any relief can be granted.

### **PRAYER FOR RELIEF**

WHEREFORE, PTT respectfully demands judgment on Jakks Pacific's Counterclaim that:

- A. The Court dismisses the Counterclaim of Jakks Pacific with prejudice;
- B. The Court enters judgment in favor of PTT;
- C. The Court finds this is an exceptional case and awards PTT its reasonable costs and attorneys' fees pursuant to 35 U.S.C. § 285; and,
- D. The Court grants to PTT such other and further relief as this Court deems just and proper.

404241.1

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN, LLP 90 Park Avenue New York, New York 10016 Telephone No.: (212) 336-8000

Attorneys for Prime Time Toys, Ltd.

Dated: July 11, 2008 By: \_\_\_\_\_/s/

Neil M. Zipkin (NZ 4718) Chester Rothstein (CR 1417) David A. Boag (DB 9899)

404241.1 5

# **EXHIBIT E**

## United States Patent [19]

## Henderson

[11] **Patent Number:**  5,928,053

**Date of Patent:** [45]

\*Jul. 27, 1999

#### AMUSEMENT DEVICE AND METHOD FOR PROPELLING WATER FROM A BODY OF WATER

[76] Inventor: Darryl G. Henderson, 105 Runnymede

Ave., Apt. B5, Wayne, Pa. 19087

This patent issued on a continued pros-[\*] Notice:

ecution application filed under 37 CFR 1.53(d), and is subject to the twenty year patent term provisions of 35 U.S.C.

154(a)(2).

[21] Appl. No.: 08/632,617

[22] Filed: Apr. 19, 1996

**U.S. Cl.** ...... 446/153; 446/176; 446/475;

446/475; 415/120; 417/572

#### [56] **References Cited**

#### U.S. PATENT DOCUMENTS

2,954,736 3,091,453	5/1963	Garland       417/572         Bennett       446/153
4,067,500	-	Stevenson
4,116,108 4,235,378		Hyman .  Melin et al
4,925,181		Anderson 272/1 B
5,009,413 5,288,256		Allen
5,433,646		Tarng

#### FOREIGN PATENT DOCUMENTS

3917167 11/1990 Germany ...... 446/475

#### OTHER PUBLICATIONS

"Super Doodle", brochure, Feb. 1996.

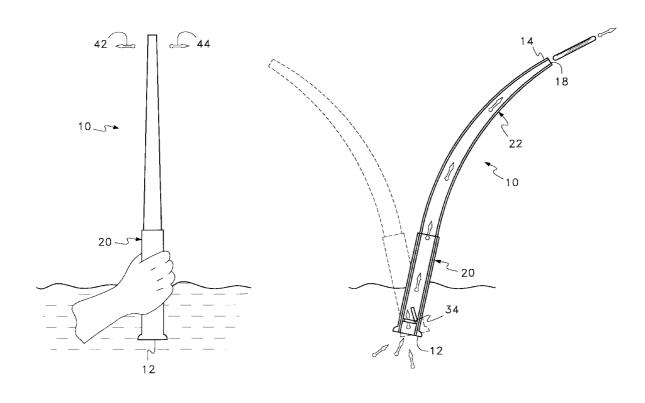
Primary Examiner-Kien T. Nguyen Assistant Examiner—Jeffrey D. Carlson

Attorney, Agent, or Firm-LaMorte & Associates P.C.

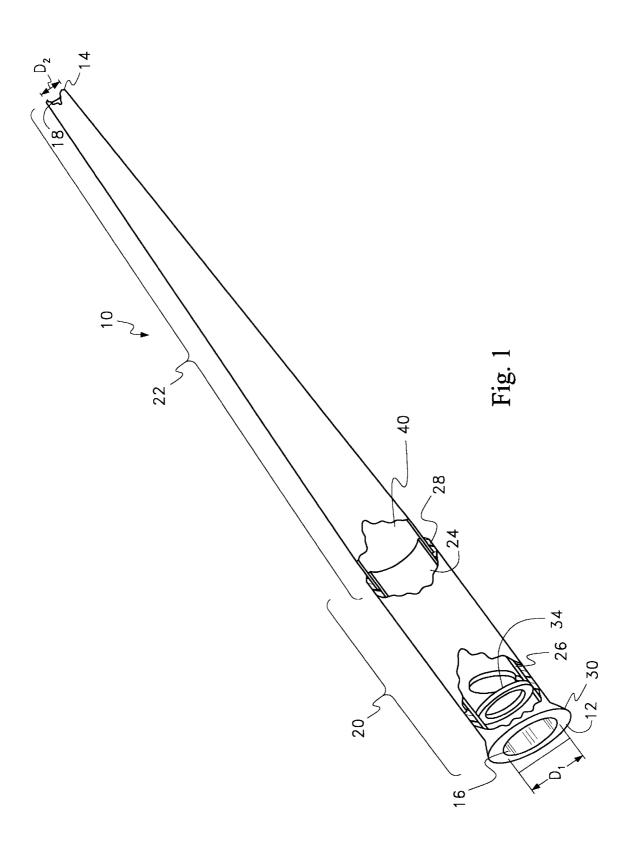
#### **ABSTRACT** [57]

An amusement device for propelling water either from a self contained reservoir or from a standing body of water. The amusement device is a type of toy whip that uses a whipping action to propel water toward a target. The amusement device contains a tubular handle and at least one flexible tubular element that extends from one end of the tubular handle, thereby forming an overall tubular structure having a rigid section and a flexible section. By partially submerging the tubular handle in a body of water and manipulating the overall tubular structure with a whipping action, water is drawn up into the tubular structure. The flexible tubular element extending from the handle tapers toward a small exit aperture. As the whipping motion of the overall tubular structure forces water toward the exit aperture, the water becomes compressed by the taper of the flexible tubular element. As a result, the water is propelled from the exit aperture at a high rate of speed. As long as the handle of the amusement device remains partially submerged, water will continuously be drawn into the device as needed.

#### 12 Claims, 4 Drawing Sheets



U.S. Patent Jul. 27, 1999 Sheet 1 of 4 5,928,053

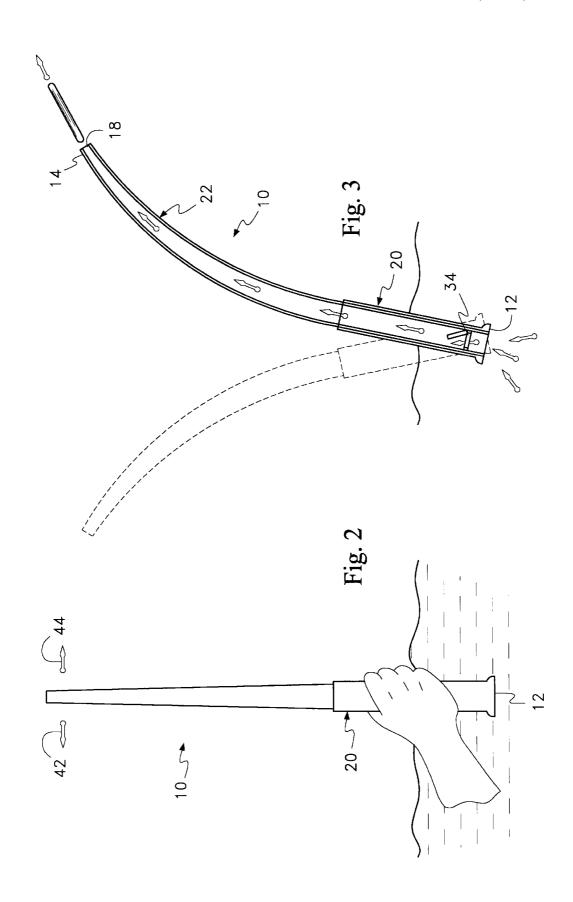


U.S. Patent

Jul. 27, 1999

Sheet 2 of 4

5,928,053





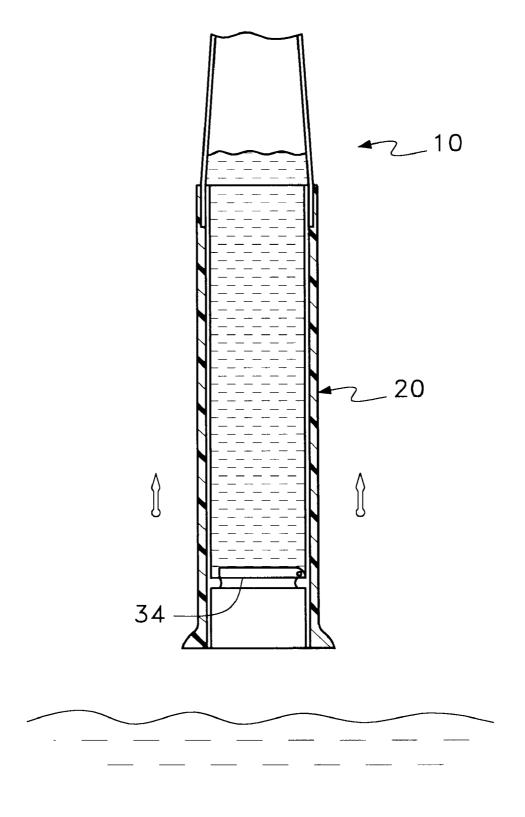
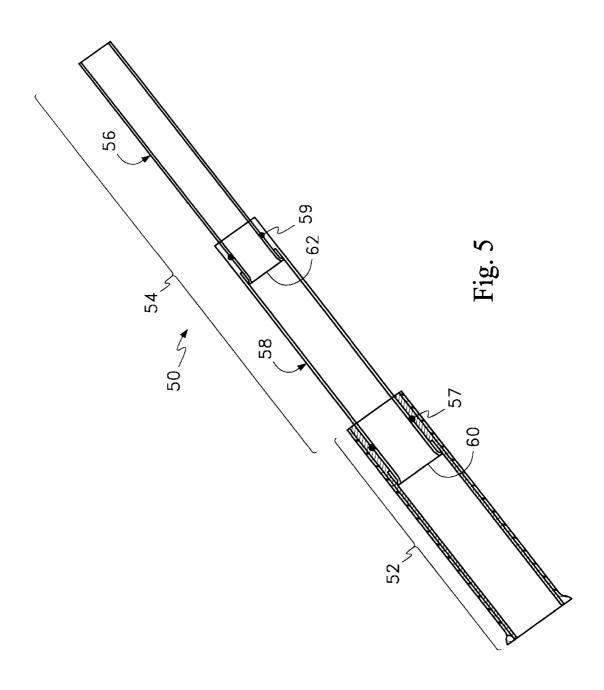


Fig. 4

U.S. Patent Jul. 27, 1999 Sheet 4 of 4 5,928,053



#### AMUSEMENT DEVICE AND METHOD FOR PROPELLING WATER FROM A BODY OF WATER

#### BACKGROUND OF THE INVENTION

#### 1. Field of the Invention

The present invention is an amusement device and method for manually propelling a volume of water toward a desired target from a standing body of water, such as a pool. More specifically, the present invention relates to devices that retain a volume of water and propel that water as a result of the amusement device being manually manipulated by a

#### 2. Description of the Prior Art

There are many amusement devices in existence that enable a person to propel a volume of water toward a target using manual energy. Many such devices take the form of water guns, wherein a relatively small volume of water is propelled toward a target in a short period of time. A  $_{20}$ characteristic of many traditional water guns is that the range of the water gun is relatively short. Since the stream of water propelled by a water gun has a small volume, the stream of water is also heavily influenced by wind resistance and cross winds that prevent the propelled water from 25 reaching the intended target across longer distances. Accordingly, the cohesive stream of water originally emitted by a water gun breaks apart while being propelled toward a distant target. As a result, at the outer range of a traditional water gun, a target may only receive a few drops of water. 30 described and claimed below.

There are many physical limitations that require traditional water guns to propel a narrow stream of water instead of rapidly emptying their reservoirs all at once. One such limitation is the fact that the reservoir carried by a traditional water gun is fairly small. By limiting the output volume of 35 the water gun, the effective life of the water reservoir is extended. However, often in water amusement games, the objective of the game is not to reserve your water supply. Rather, in many games, the objective is to get your opponent as wet as possible in as short a period of time as possible. A 40 second limitation is that many traditional water guns use the energy from a finger or hand manipulated pump to propel water toward a target. Often the energy available from such a manually manipulated pump is only sufficient enough to propel a small volume of water toward a target. As such, the  $_{45}$ physical limitations of the water propelling mechanisms in traditional water guns do not enable the water gun to discharge its reservoir in a rapid fashion.

In an attempt to increase the volume of water an amusement device can deliver in a short period of time, amusement 50 devices have been developed that use water filled projectiles. Such prior art devices are exemplified by U.S. Pat. No. 5,433,646 to Tarng, entitled WATER GUN LAUNCHING WATER GRENADE and U.S. Pat. No. 5,288,256 to Lee et al., entitled THROWN WATER PROPELLING AND DIS- 55 PENSING TOY. Such prior art amusement devices are capable of delivering a fairly large volume of water to a distant target. However, by using a projectile filled with water, a projectile with a significant bulk mass is also being delivered at the target. Consequently, if the target were a 60 person, the possibility of injury exists if the person is struck by the projectile.

U.S. Pat. No. 4,925,181 to Anderson, entitled SWIM-MING POOL WATER CANNON, shows yet another approach used in the art for delivering a large volume of 65 water at a target. In the Anderson patent, a hollow frustrumshaped amusement device is provided having handles on its

sides. A person sitting or standing in a body of water can rapidly pull the larger end of the frustrum-shaped amusement device into the body of water. As a result, water within the frustrum-shaped amusement device rushes toward the small end of the amusement device and is propelled into the

The problems associated with the amusement device described in the Anderson patent include the fact that the operator of the amusement device must position himself/ herself in a body of water of a significant depth. This alone prevents the Anderson device from being used in a game where the object of the game is to keep dry. Additionally, the Anderson device requires a significant amount of manipulation and time between firing cycles. As such, opponents <sup>15</sup> can easily advance during the period between firing cycles when the Anderson device is incapable of propelling water.

It is therefore an objective of the present invention to provide an amusement device that is capable of delivering a large volume of water at a distant target without the use of a projectile.

It is another objective of the present invention to provide an amusement device that can automatically supply itself with water from a body of water, when used near the surface of the body of water.

It is yet another objective of the present invention to provide an amusement device as stated above that is low cost, easy to manufacture and has a rapid firing cycle.

These objectives are met by the present invention as

#### SUMMARY OF THE INVENTION

The present invention is an amusement device for propelling water either from a self contained reservoir or from a standing body of water. The amusement device is a type of toy whip that uses a whipping action to propel water toward a target. The amusement device contains a tubular handle and at least one flexible tubular element that extends from one end of the tubular handle, thereby forming an overall tubular structure having a rigid section and a flexible section. By partially submerging the tubular handle in a body of water and manipulating the overall tubular structure with a whipping action, water is drawn up into the tubular structure. The flexible tubular element extending from the handle tapers toward a small exit aperture. As the whipping motion of the overall tubular structure forces water toward the exit aperture, the water becomes compressed by the taper of the flexible tubular element. As a result, the water is propelled from the exit aperture at a high rate of speed. As long as the handle of the amusement device remains partially submerged water will continuously be drawn into the device as needed, while the whipping action is occurring.

In a preferred embodiment, a one-way valve is disposed within the tubular handle. The one-way valve permits the flow of water into the tubular handle from the bottom of the tubular handle and prohibits water from flowing out of the bottom of the tubular handle. As a result, water can be drawn into the tubular handle from a body of water and then the tubular handle can be removed from the body of water. The tubular handle retains the water until the overall tubular structure is manipulated through a whipping action and the stored water is discharged.

#### BRIEF DESCRIPTION OF THE DRAWINGS

For a better understanding of the present invention, reference is made to the following description of two exem-

.

plary embodiments thereof, considered in conjunction with the accompanying drawings, in which:

FIG. 1 is a selectively fragmented perspective view of one preferred embodiment of the present invention amusement device;

FIG. 2 is a front view of the embodiment of FIG. 1 shown in conjunction with a body of water to illustrate one method of use for the present invention amusement device;

FIG. 3 is a cross-sectional view of the embodiment of FIG. 2 shown during use;

FIG. 4 is a cross-sectional view of the handle section of the embodiment of FIG. 1, shown retaining a volume of water to illustrate a second method of use for the present invention amusement device; and

FIG. 5 is a cross-sectional view of an alternate embodiment of the present invention amusement device.

#### DETAILED DESCRIPTION OF THE DRAWINGS

Referring to FIG. 1, there is shown an exemplary embodiment of an amusement device 10 made in accordance with the present invention. In the shown embodiment, the amusement device 10 is a tubular structure having an open bottom end 12 and an open top end 14. The aperture 16 defined by the bottom end 12 has a diameter D1 which is larger than the diameter D2 of the aperture 18 defined by the open top end 14.

The amusement device 10 has a handle region 20 that extends from the open bottom end 12 and a whip region 22 that extends from the handle region 20 to the open top end 14. The handle region 20 defines an open interior 24 having a volume of up to one liter. The interior 24 of the handle region 20 preferably has a circular cross-section and is formed by a piece of base tubing 26 that is rigid enough to resist being deformed when the handle region 20 is firmly grasped and manipulated by a person's hand. In the shown embodiment, the base tubing 26 within the handle region 20 is surrounded by a tubular piece of foam rubber 28 or similar material such as cork, styrofoam or the like, that makes the handle region 20 easy to grasp when wet. The thickness of the foam rubber 28 is also selected to provide buoyancy to the overall amusement device 10, wherein the handle region 20 of the amusement device 10 would float to the surface of the water should the amusement device 10 ever be dropped into the water. In the shown embodiment, the foam rubber 28 expands into a flange 30 proximate the open bottom end 12 of the amusement device 10. The flange 30 helps prevent the handle region 20 from slipping out of a user's hand when the amusement deice 10 is in use, as will later be explained.

A one-way valve 34 is located within the interior 24 of the handle region 20 proximate the open bottom end 12. The one-way valve 34 is oriented in such a manner so that the one-way valve 34 permits the flow of water through the handle region 20 from the open bottom end 12 toward the open top end 14, but prevents water from flowing in the opposite direction. In the shown embodiment, the one-way valve 34 is a flap valve. However, it should be understood that any other type of one-way valve known in the art can also be used.

The whip region 22 of the amusement device 10 is made from flexible material that enables the whip region 22 to readily bend when the handle region 20 is shaken. In the shown embodiment, the whip region 22 tapers from the point where the whip region 22 engages the handle region 20 down to the open top end 14. The whip region 22 defines an interior 40 that also tapers. At the point where the whip

4

region 22 engages the handle region 20, the interior 40 of the whip region 22 has a diameter close to that of the bottom aperture 16. The diameter of the whip region 22 then evenly tapers along its length until the interior 40 achieves the diameter D2 of the aperture 18 in the open top end 14. Preferably, the large end of the whip region 22 is affixed to the exterior of the base tubing 26 contained within the handle region 20. By using such an attachment structure, a smooth, unrestricted transition occurs between the interior 10 24 of the handle region 20 and the interior 40 of the whip region 22.

As will later be explained, the present invention amusement device 10 can be used either by a person in a body of water or by a person with access to a body of water. In both situations, the method for propelling the water toward a target remains the same. However, as will be described, the method of supplying water to the amusement device 10 differs.

Referring to FIG. 2, a first method of use for the amusement device 10 is shown, where the user is positioned in a body of water such as a pool, a lake or in the ocean. To use the amusement device 10, the handle region 20 is grasped and the amusement device 10 is held so that the open bottom end 12 of the handle region 20 is submerged. The person holding the handle region 20 then begins to move his/her wrist with a whipping action, thereby causing the opposite open top end 14 to rapidly move back and forth in the directions of arrow 42 and arrow 44.

Referring to FIG. 3, it can be seen that as the handle region 20 is rapidly moved back and forth, the whip region 22 of the amusement device 10 bends and moves widely between an advanced position (shown) and a retracted position (shown with hidden lines). As the whip region 22 is whipped to the advanced position, the air passing the rapidly moving open top end 14 creates a low pressure within the whip region 22 in accordance with the Venturi principal. The low pressure draws water up into the whip region 22, wherein centripetal force and momentum assist the water in moving toward the narrow aperture 18 at the open top end 14. Since the whip region 22 tapers toward the aperture 18 at the open top end 14, the water become increasingly confined within the whip region 22 as the water approaches the aperture 18 at the open top end 14. Water is therefore propelled from the aperture 18 at the open top end 14 each time the whip region 22 reaches the advanced position. Depending upon how rapidly the handle region 20 is manipulated by a user, the whip region 22 can reach the advanced position a few times each second. Also, by moving the whip region 22 toward the advanced position more rapidly than moving the whip region 22 into the retracted position, a person can make the amusement device 10 propel water only during the forward stroke, i.e. when the whip region 22 is moved to the advanced position.

As the water is propelled from whip region 22, water is simultaneously drawn into the amusement device 10 through the open bottom end 12. The one-way valve 34 permits the flow of water up into the amusement device 10. As a result, the amusement device 10 automatically draws the water it needs from the body of water in which it is partially submerged. As long as the amusement device 10 is rapidly cycled between the advanced position and the retracted position, water will continue to be propelled.

The present invention amusement device 10 can also be used at a location remote from a source of water. Referring to FIG. 4, it can be seen that once the amusement device 10 is filled with water, the weight of the water closes the

4

one-way valve 34, thereby trapping the water within the confines of the amusement device 10. The amusement device 10 can therefore be carried by a person far away from the source of water used to fill the amusement device 10. Once a target has been located, the amusement device 10 can 5 be rapidly moved to an advanced position with a whip action, as has previously been described. The rapid movement of the amusement device 10 causes the water stored in the amusement device 10 to move toward the aperture 18 (FIG. 1) at the open top end 14 (FIG. 1) of the amusement 10 device 10. The upward movement of the water within the amusement device 10 lowers the pressure within the amusement device 10, thereby causing the one-way valve 34 to open. As the one-way valve 34 opens, air is vented into the interior of the amusement device 10 below the upwardly 15 surging water. As a result, the water is free to flow from the aperture 18 at the open top end 14 without concern of a partial vacuum forming within the confines of the amusement device 10.

Each time the amusement device 10 is rapidly manipulated to an advanced position, some of the water held within the amusement device 10 is discharged from the aperture 18 (FIG. 1) at the top end 14 (FIG. 1) of the amusement device 10. Depending upon the size of the aperture 18, between two and ten firing cycles can be had with the amusement device 25 10 before the water supply stored within the amusement deice 10 is depleted.

To refill the amusement device 10, water is either poured through the aperture 18 (FIG. 1) at the open top end 14 (FIG. 1) of the amusement device 10 or the handle region 20 of the amusement device 10 is submerged in a body of water. When the handle region 20 of the amusement device 10 is submerged, the one-way valve 34 opens and water is free to flow into the amusement device 10. Once the handle region 20 is lifted out of the water, the weight of the water within the amusement device 10 causes the one-way valve 34 to close, thereby storing a volume of water within the amusement device 10.

Referring to FIG. 5, an alternate embodiment of an amusement device 50 is shown in accordance with the present invention. The amusement device 50 has a handle region 52 and a whip region 54. However, the whip region 54 is comprised of two tubular elements 56, 58 that are telescopically connected to each other and to the handle region 52. As such, the first tubular element 56 can be retracted into the second tubular element 58 and both tubular elements 56, 58 can be retracted into the handle region 52.

The handle region 52 is sized to receive the second tubular element 58 therein. An O-ring 57 is disposed on the interior of the handle region 52 to create a water impermeable seal between the handle region 52 and the second tubular element 58. The interior of the second tubular element 58 is tapered proximate the end 60 of the second tubular element 58 that enters the handle region 52. The taper provides a smooth transition between the interior of the handle region 52 and the interior of the second tubular element 58, thereby not significantly obstructing the flow of water between the handle region 52 and the second tubular element 58.

The second tubular element **58** is sized to receive the first 60 tubular element **56**. An O-ring **59** is disposed on the interior of the second tubular element **58** to create a water impermeable seal between the second tubular element **58** and the first tubular element **56**. The interior of the first tubular element **56** is tapered proximate the end **62** of the first tubular element **56** that enters the second tubular element **58**. The taper provides a smooth transition between the interior

6

of the second tubular element 58 and the interior of the first tubular element 56, thereby not significantly obstructing the flow of water between the second tubular element 58 and the first tubular element 56.

The telescopic construction of the amusement device 50 enables the whip region 54 to be retracted into the handle region 52 when the amusement device 50 is not being used. The whip region 54 of the amusement device 50 can be extended to its full operating length by snapping the handle region 52 forward with a whipping action. By such a manipulation, centripetal force and momentum would cause the first tubular element 56 and the second tubular element 58 to move to their fully extended positions and the amusement device 50 is ready for use.

In the embodiment of FIG. 5, no one-way valve is present within the handle region 52. As has been previously explained, when the amusement device 50 is held partially submerged in a body of water, the movement of the amusement device 50 automatically will cause water to be drawn into the handle region 52. As such, a one-way valve is not needed in the application of the present invention amusement device 50 now being illustrated. Rather, a one way valve is only required when water is to be retained within the amusement device as the amusement device is carried to a point remote from a source of water.

It will be understood that the embodiments of the present invention amusement device specifically illustrated and described are merely exemplary and the present invention can be practiced using many alternate embodiments. It will also be understood that a person skilled in the art can modify the exemplary embodiments by substituting alternate components for those specifically described. All such alternate embodiments and modifications are intended to be included within the scope of the present invention as set forth in the appended claims.

What is claimed is:

- 1. An amusement device for propelling water, comprising:
- a tubular handle having a first open end and an opposite second open end, wherein said tubular handle defines a first interior space that extends between said first open end and said second open end;
- at least one flexible tubular element having an open proximal end of a first diameter and an open distal end of a smaller second diameter, said at least one flexible tubular element defining a tapered second interior space that continuously tapers downwardly from said proximal end to said distal end, wherein said proximal end of said at least one flexible tubular element is coupled to said second open end of said tubular handle and said first interior space directly communicates with said second interior space to define a continuous open interior space between said first open end of said tubular handle and said distal end of said at least one flexible tubular element; and
- a one-way valve disposed within said rigid tubular handle, wherein said one-way valve only permits a flow of water through said first interior space from said first open end toward said second open end.
- 2. The device according to claim 1, wherein said first open end of said tubular handle defines an opening of a first size and said second open end of said tubular handle defines an opening of a second size that is smaller than said first size, wherein said first interior spaces tapers downwardly from said first open end to said second open end.
- 3. The device according to claim 1, wherein said tubular handle is rigid.

7

- 4. The device according to claim 1, wherein said at least one tubular element is telescopically coupled to said tubular handle, thereby enabling said at least one tubular element to be retracted into said tubular handle.
- 5. The device according to claim 1, wherein said at least 5 one tubular element is a single tubular element that extends from said proximal end to said distal end.
- 6. The device according to claim 4, wherein said at least one tubular element includes a plurality of tubular elements that are telescopically coupled together.
  - 7. A toy whip device for throwing water, comprising:
  - a handle having a first end, a second end and a water reservoir disposed between said first end and said second end:
  - a one-way valve disposed within said handle, wherein said one-way valve only permits a flow of water through said water reservoir from said first end toward said second end; and
  - a flexible length of tapered tubing that tapers continuously in a uniform manner from a wide end to an opposite narrow end, said flexible length of tapered tubing being coupled to said handle, wherein said wide end of said flexible length of tapered tubing communicates with said water reservoir, and water from said water reservoir travels through said flexible length of tapered tubing to said opposite narrow end when said toy whip device is manipulated with a whipping action.

8

- 8. The device according to claim 7, further including an aperture in said water reservoir, wherein said aperture enables air to flow into said water reservoir when said device is manipulated with a whipping action and water is moved from said water reservoir into said flexible length of tapered tubing.
- 9. The device according to claim 7, wherein said handle is buoyant and is capable of causing all of said device to float 10 in water.
  - 10. The device according to claim 7, wherein said tubing is telescopically coupled to said handle, thereby enabling said tubing to be positioned between a retracted position where said tubing is at least partially retracted into said handle and an extended position where said tubing fully extends from said handle.
- 11. The device according to claim 10 wherein said tubing is free moving with respect to said handle and moves from
  20 said retracted position to said extended position when said device is manipulated with a whipping action.
  - 12. The device according to claim 11, wherein said tubing includes a plurality of telescoping sections that extend into a fully extended condition when said device is manipulated with a whipping action.

\* \* \* \* \*

**EXHIBIT F** 

Patent Number:

[11]

#### United States Patent [19] Sands [54] TOY WATER GUN WITH A MULTIPLICITY OF OPERATION MODES [76] Inventor: Ned R. Sands, 2230 Holly Ave., Escondido, Calif. 92027 [21] Appl. No.: 553,037 [22] Filed: Nov. 18, 1983 Int. Cl.<sup>4</sup> ...... B67D 5/42; B67D 5/52 [51] U.S. Cl. ...... 239/394; 239/444; 222/79; 222/137; 222/144.5; 222/330; 222/387; 222/520; 272/27 N [58] Field of Search ...... 222/79, 330, 485, 144.5, 222/137, 566, 145, 567, 386, 575, 519, 520, 548, 549, 553, 387; 446/475; 272/8 R, 8 N, 27 R, 27 N; 124/65, 71, 73, 81, 83, 85; 239/444, 446, 447, 394, 391, 392 [56] References Cited U.S. PATENT DOCUMENTS D. 159,040 6/1950 Bicos ...... 222/79 X 933,961 9/1909 Moulin ...... 222/79 956,760 5/1910 Moulin ...... 222/79 Cloud, Jr. ..... 222/79 1,031,526 7/1912 1,394,456 10/1921 Wanat ...... 222/79

2,218,411 10/1940 Albach et al. ...... 239/444 X

Brandt ...... 239/447

2,148,726 2/1939

 [45] <b>L</b>	vate of	Patent:	Jul.	1, 1986
2,530,808	11/1950	Cerasi		239/444 X
2,546,120	3/1951	Boroughs	•••••	239/444 X
3,058,670	10/1962	Marotto et al		239/390 X
3,117,696	1/1964	Herman et al		222/137
		Schultz et al		
		Creighton, Jr. et		

#### FOREIGN PATENT DOCUMENTS

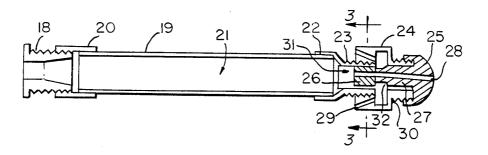
424096 5/1967 Switzerland ...... 222/549 1914 9/1919 United Kingdom ...... 239/394

Primary Examiner—Joseph J. Rolla Assistant Examiner-Kevin P. Shaver Attorney, Agent, or Firm-Laurence R. Brown

#### **ABSTRACT**

A toy water shooting gun for shooting water in a plurality of directions with respect to the axis of the gun. The toy water gun is operable by a plunger/piston rod movable within a water storage cylinder. A cap having a plurality of apertures is located at the discharge end of the water gun and is rotatable to operate a valve to selectively align the apertures with the water cylinder for discharge therethrough. The apertures when in communication with the water cylinder discharge water in different directions, i.e., forward, rearward and sideways.

5 Claims, 13 Drawing Figures



# U.S. Patent Jul. 1, 1986 Sheet 1 of 2

4,597,527

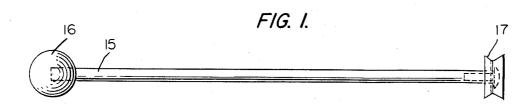
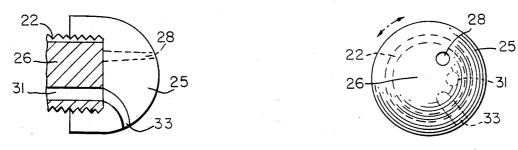
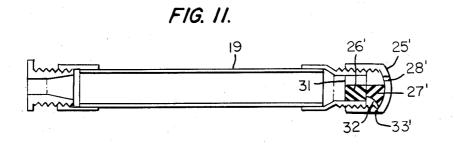
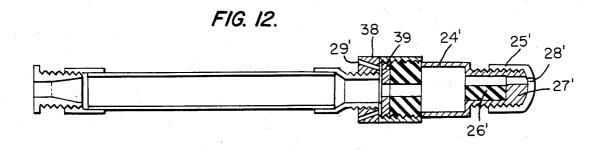


FIG. 2. FIG. 3. 26 20 18

FIG. 4. FIG. 5.



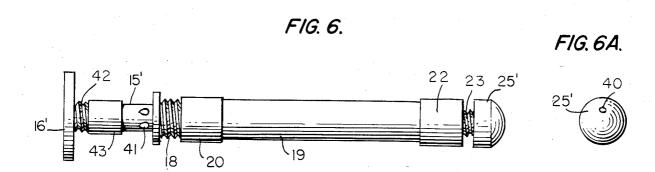


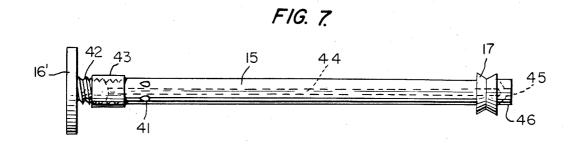


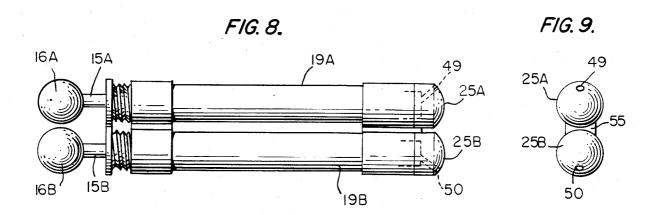
U.S. Patent Jul. 1, 1986

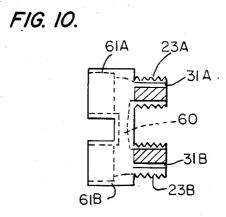
Sheet 2 of 2

4,597,527









1

# TOY WATER GUN WITH A MULTIPLICITY OF OPERATION MODES

#### **TECHNICAL FIELD**

This invention relates to toy water guns and more particularly it relates to guns having a piston movable in a chamber for forcing a charge out of a nozzle aperture which feature operation in a plurality of modes.

#### **BACKGROUND ART**

Fluid discharging guns having movable piston rods and a fluid containing chamber have long been known as evidenced by U.S. Pat. No. 1,031,526—N. H. Cloud, Jr. —July 2, 1912. Also the operation of such guns in multiple modes is known as evidenced by U.S. Pat. No. 1,394,456—J. Wanat—Oct. 18, 1921, which discloses a combination pop gun, water gun and whistle attained by changeable outlet port structure.

However, it is an objective of this invention to produce a versatile toy water gun having various modes of operation as a water gun, which structure and versatility the prior art does not teach.

#### DISCLOSURE OF THE INVENTION

A water gun operable by a plunger piston rod movable in a water storage cylinder in accordance with this invention has a plurality of discharge apertures and manually operable valve means for selecting different operating modes related to operation of different discharge apertures. The water gun has even more flexibility in that a set of different replaceable nozzle orifice caps provide a larger range of selectable operation modes.

For example, nozzle apertures can be selected to shoot a stream of water selectively straight ahead, to one side or backward toward the plunger operator. Thus, the toy provides a range of games and tricks which may be played by selection of different nozzle 40 caps and different valve settings.

Multiple barrelled guns may be used for greater storage capacity and a greater range of selectable operating modes. Simple and effective valve means is provided by simple rotation of a nozzle cap or plunger handle.

Other objects, features and advantage of the invention will be found throughout the following description, the drawings and the claims.

#### BRIEF DESCRIPTION OF THE DRAWINGS

In the drawing:

FIG. 1 is a side view sketch of a piston-rod-plunger assembly that operates inside the barrel-nozzle assembly as shown in the side view sketch, partly shown in section of FIG. 2;

FIG. 2 shows a three directional water gun barrel assembly in cross-section;

FIG. 3 shows an end view, partly in section of the barrel and a part of the valve looking from the right into the barrel along lines 3—3 of FIG. 2;

FIG. 4 is a fragmented side view, partly in section of the valve-barrel assembly of FIG. 3 having only a single replaceable nozzle cap embodiment thereon;

FIG. 5 is an end view of the cap looking from the right in FIG. 4;

FIG. 6 is a side view of an assembled further embodiment of the invention, with FIG. 6A being an end view of the nozzle cap looking into the right of FIG. 6, and

FIG. 7 a side view of the plunger-piston-rod assembly of the FIG. 6 embodiment;

FIG. 8 is a side view sketch of another embodiment of the invention with two parallel barrels, and FIG. 9 is a sketch looking into the right of FIG. 8 at the end cap;

FIG. 10 is a side view sketch, partly in section of an end cap adaptor assembly for the FIG. 8 embodiment;

FIG. 11 is a cross-section view of a two directional water gun barrel assembly for front and side shots; and FIG. 12 is a cross-section view of a two directional barrel assembly embodiment for front and rear shots.

#### THE PREFERRED EMBODIMENTS

As seen from FIGS. 1 and 2, a plunger comprises rod 15 15, such as a hollow aluminum tube, with hand grasp ball 16 affixed thereto on one end and a piston 17 at the other end. This plunger has rod 15 journalled in the screw in plastic fitting 18 carried by hollow tube 19, typically a hollow aluminum tube upon which joint 20 20 is glued, and which serves to define a cylinder chamber 21 for receiving and discharging water as sucked in or pumped out by the piston 17.

Similarly a joint 22 is glued at the orifice end of the chamber 19 having screw threads 23 for receiving a plurality of different types of nozzles 24, 25, etc. as will be made more clear hereinafter. Valve structure having internal plugs 26, 27 direct the flow of water from chamber 21 through one or more selected apertures from a plurality of apertures available such as forward 30 shooting aperture 28 in nozzle 25 or rearwardly shooting aperture 29 in cap 24. Structure 26, 27 may be of any suitable material such as plastic, metal, rubber, etc. and are cross sectioned to distinguish the structure in this line sketch presentation. Note that valve structure plug 27 is integral with and rotatable with cap 25 on threads 30.

In operation, as shown in FIGS. 2 to 5, the valve plug structure 26, 27 serves to pass water from chamber 21 through channel 31 in the plug 26 in the discharge of joint 22. The mating rotary valve plug 27 integral with cap 25 serves to match an outlet path to two or more apertures such as 28 or 29 to discharge orifices selectable by turning cap 25. Thus the aperture 28 when not aligned with channel 31 will permit release of water to 45 flow out backwardly facing apertures 29 toward handle 16 and the operator of the pump. Similarly as shown with orifice 28 aligned with channel 31 the gun fires water in the forward direction away from the handle 16. Note also the side shooting channel 33 (FIG. 4) in cap 50 25 that may be aligned with the channel 31 for shooting water sideways. It is clear therefore that simple selection valve structure such as rotatable cap 25 will permit selective discharge of water in a plurality of different directions. A variety of interchangeable caps 24 and 25 55 may be provided with different choices and variations.

Note that in the FIG. 2 version an outer cap 25 without aperture holes can easily be replaced to provide a valve changing structure permitting the water gun to shoot backwards only. Note also that the plug portion 27 need be turned by orifice cap 24 and the plug portion 26 is stationary. Outer cap 25 turns relative to plug 27.

A simpler two directional gun barrel 19 assembly in FIG. 11 has similar plugs 26' and 27' and only the outer cap 25' with two orifices, namely 28' for forward shooting and 33' for sideways shooting. Thus, the cap 25' is rotatable from the shown forward shooting position to turn plug 27' therewith and align the notch 32 with channel 31 to shoot sideways out nozzle 33'.

4,597,527

3

A two directional gun embodiment as shown in FIG. 12 will permit forward and/or backward shooting. It is seen that by turning cap 24' the gasket 39 either seals or opens the backward orifices 29' in fitting 38. The plug channel to outlet orifice 28'. Plug 26' is stationary in inner cap member 24'.

FIGS. 6 and 7 show a further embodiment that discharges both in forward and backward directions. Like reference characters permit comparison of similar pats, 10 and primed reference characters indicate slightly modified versions. Note for example nozzle cap 25' has only one forward shooting orifice 40 located off center so that by rotation of the cap 25', the water path out orifice 40 may be opened or blocked selectively, as illustrated 15 in FIGS. 3 to 5.

In the embodiment of FIGS. 6 and 7 hollow push rod 15 has rearwardly extending orifices 41 and a control valve arrangement therefore comprising handle 16' rotatable by screw threads 42 in collar 43 to position 20 internal needle valve 44 into the orifice 45 of screw head 46 holding on the piston 17. Thus, when handle 16' releases the needle rod 44 to the left from aperture 45 and opens it when aperture 40 is closed, water flows freely from the chamber inside tube 19 out apertures 41 toward the handle 16' and the operator. If the needle valve is closed, and aperture 40 is open, then water flows only out the nozzle cap 25 and aperture 40. Since ture 40 being greater, most of the water shot out by movement forward (to the right) of plunger rod 15 will pass out in the rearward direction even if the aperture 40 is open.

Another dual barrelled embodiment is shown in 35 FIGS. 8 and 9. As seen by apertures 49, 50, this version can shoot out at two different angles from the corresponding slanted apertures in caps 25A and 25B. One advantage of this version is more water storage capacity. Another is the choice of either independent or dual 40 action of the two plungers 15A, 15B. The two units are held together by a suitable bracket.

As seen in FIG. 10 the bracket may also include a water communication channel 60 between the two chambers. The sleeves 61A and 61B may slip respec- 45 tively over the tubings 19A and 19B and be glued thereto. As in the prior arrangements, by use of appropriate nozzle caps having nozzle outlets alignable with respective channels 31A or 31B, a multiplicity of operating modes may be manually selected to shoot water 50 out nozzles in various directions.

Having therefore described the invention and its operation, those features of novelty believed descriptive of the spirit and nature of the invention are set forth with particularity in the claims.

I claim:

- 1. A toy water shooting gun comprising a longitudi-27' turns with cap 25' to either open or close the water 5 nal cylinder having a water retaining chamber and a water discharge end, a nozzle for discharging a stream of water connected to the water discharge end of said chamber, and a movable piston within said cylinder externally operated for loading and discharging water therefrom, the improvement comprising a rotatable cap having a plurality of apertures therethrough for discharging a water stream in one of several selectable different directions and valve means for selectively connecting one of said plurality of apertures to the cylinder discharge end for discharging a water stream through the selected single aperture, wherein said nozzle includes said rotatable cap carried thereby, said valve means including a channel passing through a first plug carried by said cylinder discharge end and wherein the valve means further comprises a second relatively rotatable plug carried by said nozzle cap positionable upon rotation of said cap to align said channel of said first plug with said selected aperture to discharge a stream of water from said gun upon actuation of said 25 piston within said cylinder.
  - 2. The toy defined in claim 1 wherein individual ones of the nozzle cap apertures direct discharged water in different directions.
- 3. The toy defined in claim 1 wherein one aperture of several holes 41 are available the friction of single aper30 said plurality of said apertures directs water in a direction substantially perpendicular to the cylinder means.
  - 4. The toy defined in claim 1 wherein one aperture of said plurality of said apertures directs water in a direction substantially rearward along the cylinder means in the direction of an operator of the piston.
  - 5. In a toy water shooting gun comprising a longitudinal cylinder providing a chamber for retaining water, nozzle means at the discharge end of said chamber for discharging water, and a movable piston movable within the cylinder for loading and discharging water, the improvement comprising a plurality of nozzles having apertures for discharging water and valve means for selectively connecting different ones of said apertures to the discharge end of cylinder for water discharge therethrough, wherein the movable piston includes a hollow operating plunger shaft extending from the cylinder and terminating in an operating handle, one of said apertures being in said hollow plunger shaft rearwardly directed toward and proximate the handle, and said valve means being operable by the handle for selectively admitting water from said cylinder chamber into the hollow shaft.

**EXHIBIT G** 



#### US005231951A

# United States Patent [19]

Tagar et al.

[11] Patent Number: 5,231,951 [45] Date of Patent: Aug. 3, 1993

[54] INFLATABLE HUMAN SUPPORT STRUCTURE WITH LIQUID SQUIRTER			Yount
---	--	--	-------

[75] Inventors: Leon H. Tagar, San Carlos; William R. Storey, Sunnyvale, both of Calif.

R. Storey, Sunnyvale, both of Calif.

R. Storey, Sunnyvale, both of Calif.

Attorney, Agent, or Firm—Flehr, Hohbach, Test, Albritton & Herbert

[73] Assignee: Poolmaster, Inc., Sacramento, Calif.

[57] ABSTRACT

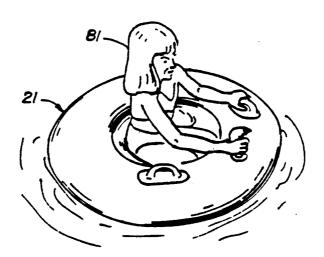
[21] Appl. No.: 897,865

A device for use by a human in a body of water com-

[22] Filed: Jun. 12, 1992 prising a support structure having a buoyancy in water sufficient to support a human on the body of water. A Related U.S. Application Data water squirter is carried by the support structure and has piping means adapted to be disposed in the body of [63] Continuation of Ser. No. 683,120, Apr. 3, 1991, Pat. water in a region in the vicinity of the support structure. No. 5,167,554. The water squirter includes a member adapted to be Int. Cl.<sup>5</sup> ...... B63C 9/08 engaged by the human for operation of the same. The [52] U.S. Cl. ...... 114/345; 441/131; water squirter is positioned on the support structure so 222/79 that the water squirter can be engaged and operated by [58] Field of Search ...... 441/129-132, the human while the human is being supported on the 441/136; 114/345, 346; 222/79; 272/32, 33 R body of water by the support structure so that squirts of water can be directed from the water squirter at a loca-[56] References Cited

2 Claims, 3 Drawing Sheets

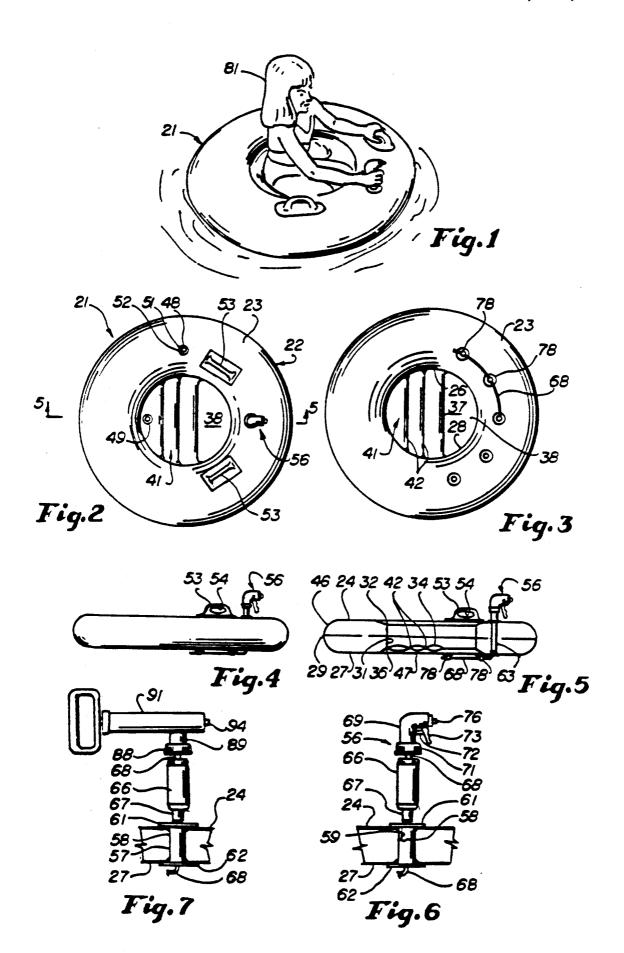
tion which is above the surface of the water.



**U.S. Patent** Aug. 3, 1993

Sheet 1 of 3

5,231,951

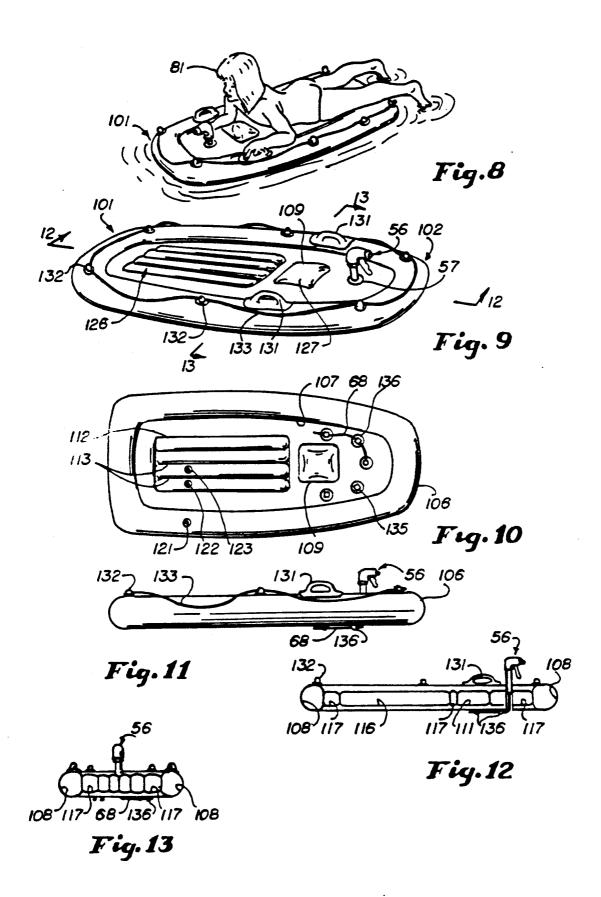


U.S. Patent

Aug. 3, 1993

Sheet 2 of 3

5,231,951



U.S. Patent

Aug. 3, 1993

Sheet 3 of 3

5,231,951

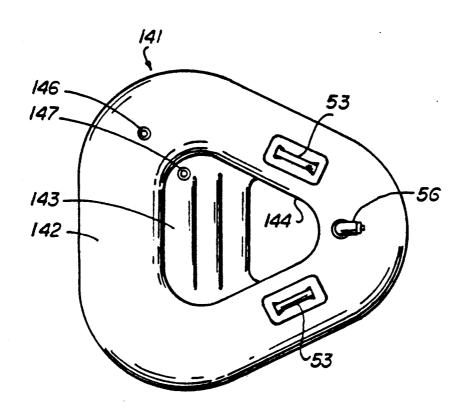


Fig.14

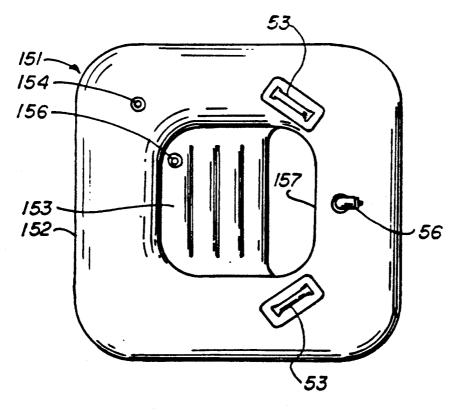


Fig. 15

5,231,951

#### INFLATABLE HUMAN SUPPORT STRUCTURE WITH LIQUID SQUIRTER

1

This is a continuation of application Ser. No. 5 07/683,120 filed Apr. 3, 1991, now U.S. Pat. No. 5,167,554, Dec. 1, 1992.

This invention relates to an inflatable human support structure with liquid squirter.

Inflatable rafts, tubes and the like have heretofore 10 been provided for supporting humans upon a body of water. In order to enhance the use of such devices, and particularly in pools by children, there is a need for devices which can be utilized in conjunction therewith to make the use of such devices more satisfying, i.e., 15 more fun to use and to provide play.

In general, it is an object of the present invention to provide a human support structure with liquid or water squirter which can be utilized on a body of water.

Another object of the invention is to provide an in- 20 flatable structure of the above character which can be inflated and deflated.

Another object of the invention is to provide a support structure which can take various forms.

Another object of the invention is to provide a sup- 25 port structure of the above character in which the support structure is circular.

Another object of the invention is to provide a support structure of the above character in the form of a 30

Another object of the invention is to provide a support structure of the above character in which the liquid squirter is readily accessible to a human carried by the support structure for operation of the same.

Another object of the invention is to provide a support structure of the above character in which the liquid squirter is utilized for squirting water from the body of the water in which the support structure floats.

Another object of the invention is to provide a sup- 40 face upon which the human can lie. port structure of the above character in which the support structure is particularly adapted to have a human seated therein.

Another object of the invention is to provide a support structure of the above character in which the sup- 45 port structure is particularly adapted to support a human in a lying down position.

Another object of the invention is to provide a support structure with liquid squirter of the above charac-

Additional objects and features of the invention will appear from the following description in which the preferred embodiments are set forth in detail in conjunction with the accompanying drawings.

FIG. 1 is a perspective view of an inflatable human support device with liquid squirter with a human occupant shown therein.

FIG. 2 is a top plan view of the device shown in FIG.

FIG. 3 is a bottom plan view of the device shown in FIG. 1.

FIG. 4 is a side elevational view of the device shown in FIG. 1.

FIG. 5 is a cross sectional view taken along the line 65 5-5 of FIG. 1.

FIG. 6 is a partially exploded view of the squirter shown in the device in FIGS. 1-4.

2

FIG. 7 is a partially exploded view of another embodiment of a squirter which could be utilized with the device shown in FIGS. 1-5.

FIG. 8 is a perspective view of another embodiment of an inflatable human support device with liquid squirter incorporating the present invention.

FIG. 9 is an isometric view of the device shown in

FIG. 10 is a bottom plan view of the device shown in FIGS. 8 and 9.

FIG. 11 is a side elevational view of the device shown in FIGS. 8, 9 and 10.

FIG. 12 is a cross sectional view of the device shown in FIGS. 8-10 taken along the line 12-12 of FIG. 9.

FIG. 13 is a cross sectional view taken along the line 13-13 of FIG. 9.

FIGS. 14 and 15 show alternate shapes of the inflatable human support device.

In general, the device for use by a human in a body of water is comprised of a support structure having a buoyancy in water sufficient to support a human in a body of water. A water squirter is carried by the support structure and has piping means adapted to be disposed in the body of water in a region in the vicinity of the support structure and also including a member adapted to be engaged by the human for operation of the same. The water squirter is positioned on the support structure so that the water squirter can be engaged and operated by the human while the human is being supported on the body of water by the support structure to direct squirts of water from the support structure at a position which is above the surface of the body of water. The support structure can take the form of a tubular member which is provided with a seat with an opening adjacent the seat through which the legs can extend and in which the human can be positioned in a seating position. Another embodiment of the support structure can be in the form of a raft having a flat sur-

More in particular, the device 21 for use by a human in a body of water consists of a support structure 22 having a buoyancy in water sufficient to support a human on the body of water. The support structure 22 is formed of materials which are utilized in inflatables for use in swimming pools and the like. It is well known to those skilled in the art that such inflatables can be formed of rubber, plastic and other materials. One material found to be particularly satisfactory is polyvinyl ter in which various types of liquid squirters can be 50 chloride (PVC) which is provided in flexible sheet form of a suitable thickness, as for example 14 gauge, and which can be readily heat sealed onto itself to provide the support structure. In the present embodiment of the invention, the support structure 22 is formed by a top 55 sheet 24 which is provided with a circular cutout 26 and a bottom sheet 27 which is also circular in form but which is provided with an inner sector shaped cutout 28. The outer margins of the top and bottom sheets 24 and 27 are secured together in a suitable manner such as 60 by heat sealing at 29.

The inner annular margin of the top sheet 24 is secured to a vertically extending ring-like piece or element 31 at 32 which extends in a vertical direction when the support structure 22 is inflated as hereinafter described. The lower margin of the piece or element 31 is heat sealed to a sector-shaped piece or element 34 at 36. The piece or element 34 extends over the bottom sheet 27 and is aligned with the bottom sheet 27 and heat 5,231,951

3 sealed thereon at 37 to provide a sector shaped opening

As can be seen, the sector shaped piece or element 34 in conjunction with the bottom sheet 27 provides a support area in the form of a seat 39 upon which the 5 posterior or buttocks of a human being can be positioned in a seating position with the legs of the human being extending through the opening 38. In order to provide additional rigidity to the seat 41, the sector sheet 27 along parallel lines 42 which extend parallel to the heat-sealed seam at 37.

By construction of the support structure in this manner, two separate buoyancy chambers 46 and 47 are in shape whereas the buoyancy chamber 47 is sectorshaped. Means is provided for inflating the chambers 46 and 47 and consists of inflation valves 48 and 49 which can be located in desired positions, as for example, as tion with the chamber 46 and the valve 49 is in communication with the chamber 47. The inflation valves 48 and 49 can be of a conventional type as, for example, when plastic is used, the valve can be in the form of a flexible valve stem 51 which can be heat sealed into the top sheet 24. It is of a size so that it is adapted to be grasped by the lips of a human being so that it can be inflated by a human. It is also provided with an attached valve stem 51 when the chamber has been inflated to maintain inflation of the chamber. The inflation valve 49 for the seat 41 is constructed in a similar manner.

Typically in order to support an adult, the support mately four feet with the chamber 46 having a vertical dimension of approximately one foot.

If desired, as shown, hand holds can be provided on the top sheet 24 and can be in the form of handles 53 formed of a suitable material such as a solid plastic 40 polyvinyl chloride which are bonded to the top surface of the top sheet 24 in positions adjacent the opening 38 so that they can be grasped by the two hands of a human being or person seated on the seat 41. As can been seen, the handles 53 are directed at angles so that they extend 45 approximately 90° with respect to each other. The handles 53 are generally U-shaped and are provided with generally rectangular openings 54 through which the hands can extend.

A squirter assembly 56 is mounted upon the support 50 structure 22 in a position so that it can be engaged and operated by the human while the human is being supported on the body of water by the support structure to direct squirts of water from the support structure at a position which is above the surface of the body of wa- 55 ter. Thus, as shown in FIGS. 2 and 3, the squirter assembly 56 is mounted on the tubular member 23 in a position which is immediately in front of the opening 38 so that it can be readily grasped by the hand of a human seated on a seat 41. The squirter assembly 56 is mounted 60 squirter by directing squirts of water at the person in the in a spool 57 which extends through the tubular member 23. The spool 57 is comprised of a cylindrical member 58 which has a hole 59 extending therethrough. Flanges 61 and 62 are provided on opposite ends of the cylindrical member 58. The spool 57 is adapted to be mounted 65 in a hole 63 provided in the tubular member and has its flanges 61 and 62 resting on the top and bottom sheets 24 and 27 as shown, particularly in FIG. 6.

The squirter assembly 56 is provided with a cylindrical body 66 which can be seated within the hole 59 of the spool 57 and be frictionally retained therein. The lower extremity of the cylindrical body 66 is provided with a cylindrical extension 67 through which the water intake tube 68 extends. The water intake tube 68 is connected to a head 69. The head 69 is provided with a cap 71 which is adapted to be threaded onto the upper extremity of the cylindrical body 66. The head 69 includes shaped piece or element 34 is heat sealed to the bottom 10 a pump assembly (not shown) which is disposed therein. The pump assembly includes an operating member 72 which is connected to a trigger handle 73. The head 69 is provided with a nozzle 76 which is connected to the output of the pump (not shown) operated by the trigger provided with the buoyancy chamber 46 being annular 15 73. As shown, the nozzle 73 is pointed in a direction so that it can direct a stream of liquid from the pump in a direction which is approximately 90° with respect to the vertical axis of the squirter.

The liquid or water intake tube 68 can be of a suitable shown in FIG. 2 in which the valve 48 is in communica- 20 length so that it can take in water as, for example, upon which the support structure 22 is floating. Thus, as shown, particularly in FIGS. 3, 4 and 5, the water intake tube 68 can extend down through the bottom of the hole 63 and extend downwardly into the body of water. 25 In order to ensure that the water intake tube is in an out-of-the way position and does not interfere with the legs of the human using the device, the water intake tube can be retained on the bottom of the support strucremovable valve plug 52 which can be inserted into the 30 spaced apart eyelets 78 formed of a suitable material ture, as for example, extending the tubes 68 though such as plastic and bonded to the tubular member on the bottom surface of the tubular member. In this way, the squirter assembly 56 can be readily removed from the structure 22 can have an outside diameter of approxi- 35 body 66 out of the spool 57 and withdrawing the tube 68 support structure 22 merely by pulling the cylindrical from the eyelets 78.

Operation and use of the device may now be briefly described as follows. The device can be inflated in the manner hereinbefore described by use of the inflation valves 48 and 49. After the device has been inflated, the device can be placed in a body of water, as for example. in a swimming pool. The tubular member 23 provided for the support structure provides stability on the body of water for the human being. The occupant or user can readily mount or dismount the device. For example, the device could be thrown in the pool and the intended user 81 can jump onto the device and seat himself or herself in the device by becoming seated on the seat 41 and having legs extend through the opening 38 as shown in FIG. 1. Alternatively, the human being 81 can climb onto the device 21 from the swimming pool and sit on the seat 41 with the legs extending through the opening 38. With the feet in this position, the occupant can paddle the feet to move the device from one location to another in the pool. The handles 53 provided on the device makes it possible for the occupant to stabilize himself or herself in the device in the event one bumps into another such device in the same body of water. In addition, water games can be played with the use of the other device or devices in the pool by actuation of the trigger or handle 73 to operate the pump of the squirter assembly 56. The jets or squirts of water from the squirter assembly 56 can be directed in various directions merely by rotating the squirter assembly within the spool 57. If desired, the squirter assembly can be removed from the spool 57 to give additional freedom in directing the jets or squirts of water from the squirter

5,231,951

assembly. The water intake tube 68 is sufficiently long so that its lower extremity will still be below the surface of the body of water so that there is an unlimited source of liquid for operation of the squirter assembly. Thereafter, the squirter assembly can be readily placed in the 5 spool 57 and the water intake tube 68 threaded through the eyelets 78.

5

It should be appreciated that different types of squirter assemblies can be utilized, other than the squirter assembly 56 shown. For example, a squirter 10 assembly 86 such as shown in FIG. 7 can be provided for providing squirts or jets of water which have greater volume and force so that jets or squirts of water can be projected over longer distances. The squirter assembly 86 as shown in FIG. 7 is comprised of a spool 15 57 and a cylindrical body 66. A head 87 is provided which has a cap 88 that is threadedly mounted on the body 66. The head 87 is provided with a cylindrical member 89 which is connected to a large cylindrical member 91 that extends at right angles thereto. A large 20 pump assembly (not shown) of a conventional type is mounted within the cylinder 91 and is connected to a pump handle 92 which is adapted to be grasped by the hand of a user. By operation of the handle, jets or squirts assembly 86 which is shown in FIG. 7 can be utilized in the same manner as the squirter 56. It is of a larger size so that it can be utilized by larger human beings than the squirter 56. It also can be utilized for directing more forceful squirts or jets of water longer distances than 30 with the squirter 56.

Another embodiment of a device for use by a human in a body of water is shown in FIGS. 8-13. As shown therein, the device 101 is comprised of an inflatable support structure 102 in the form of a raft which is 35 adapted to support a human body upon a body of water. It can be formed of a material similar to the support structure 22 as, for example, plastic. Two sheets 103 and 104 cut to the desired conformations can be heat sealed together along the outer margin at 106. Another heat 40 seal can be formed at 107 extending around the perimeter of the sheets 103 and 104 spaced inwardly from 106 to provide a relatively large tubular buoyancy chamber 108 which extends around the outer margin of the sup-109 is provided near the forward extremity of the support structure 22 to provide another buoyancy chamber 111. Another rectangular heat seal is provided at 112 to the rear of the heat seal at 109 with a plurality of spaced parallel heat seals 113 being disposed within the heat 50 seal 112 so that there are provided a plurality of buoyancy chambers or compartments 116. By these heat seals, an additional chamber 117 is provided which extends around the chambers 116 and the chambers 111 and which is disposed within the confines of the cham- 55 146 and 147 are provided for inflating the same. ber 108.

A valve 121 is provided for inflating the chamber 108. A valve 122 is provided for inflating the chamber 117 and a valve 123 is provided for inflating the chambers 116. The valves 121, 122, and 123 are of the type herein- 60 before described and are adapted to be inflated by human beings.

The support structure 102 is constructed in such a way so that the main portion of the human body can rest upon the large elongate rectangular support area 126 65 provided above the chamber 116 to support the main portion of the body. The rectangular support area 127 within the heat seal at 109 can provide support for the

6 head of the body being supported by the support struc-

A pair of handles 131 of the same type as the handles 53 are mounted on the support structure above the chamber 108 on opposite sides of the area 127 and are bonded thereto.

A plurality of eyelets 132 are also mounted upon the support structure 102 on the top surface thereof and extend around the outer perimeter and are adapted to receive a flexible elongate line or rope 133 which can extend around the outer margin of the support structure 102 as shown, particularly in FIG. 9. This line or rope 133 can be utilized for towing the device or for grabbing the device.

A squirter assembly 56 of the same type as hereinbefore described in the previous embodiment is mounted in a spool 57 provided in the support structure. The water intake tube 26 can be mounted in eyelets 136 provided on the bottom side of the support structure 122 as shown particularly in FIGS. 10 and 11. Again, it can be seen that the water intake tube 26 is disposed in an out-of-the way position underneath the support structure.

The operation and use of the device 101 is similar to of water can be ejected from the nozzle 94. The squirter 25 the device 21. The principal difference is that in the device 101 the person or human body is normally supported in a reclining or horizontal position with the face facing downwardly and facing forwardly towards the squirter assembly 56. In this manner, the squirter assembly 56 can be readily accessible to a hand of a human so that the trigger 73 can be readily engaged to operate the pump which is provided in the squirter assembly. The squirter can be operated in the same manner as in the previous embodiment. For example, it can be rotated and even lifted out of the spool 57 when desired to achieve the desired trajectory for the jet or squirt of water being ejected therefrom. When the squirter assembly 56 has been removed from the spool, the water intake line will still be in the body of water so that there is available an unlimited source of water for carrying on water play. After use, the squirter assembly 56 can be again reinserted in the spool 57 and the water inlet lines threaded through the eyelets 136.

Additional embodiments of the device incorporating port structure 22. An additional rectangular heat seal 45 the invention are also shown in FIGS. 14 and 15. In FIG. 14, the device 141 has a construction very similar to that shown in the device 21 with the principal difference being that the configuration is generally triangular rather than circular as shown in FIGS. 1-6. It is provided with a tubular member 142, a seat 143 with an opening 144 through which the legs of the person can extend. It is also provided with a pair of handles 53 on opposite sides of the opening 144 and a squirter assembly 56 disposed forwardly of the opening 144. Valves

In the device 151 shown in FIG. 15, the configuration is substantially rectangular rather than circular as shown in FIGS. 1-6. It also is provided with a tubular member 152, a seat 153 with valves 154 and 156 for inflating the same. An opening 157 is provided for the legs of the user. A squirter assembly 56 is mounted forwardly of the opening and handles 53 are provided on opposite sides of the opening.

Operation and use of the devices shown in FIGS. 14 and 15 is substantially the same as that described for the embodiment shown in FIGS. 1-6.

From the foregoing, it can be seen that there has been provided for use by humans, devices designed for use in

7 a body of water for water play. The devices are constructed in such a manner so that they can be utilized while being in seated or reclining positions. The devices are constructed in such a manner so that they are safe to use by children. The devices can be readily moved in 5 the body of water, either by paddling the feet in a seated position or by utilizing the arms and feet in a reclining position. At the same time, one of the hands can be utilized for operating the squirter assembly to direct jets of water towards the opponent. It can be seen that the 10 device is readily adapted for group play in which a number of the devices can be utilized in the same pool with human beings, i.e., children, being mounted in the devices for engaging in play. The devices are constructed in such a manner so that they can be formed of 15 relatively inexpensive material at low cost.

What is claimed is:

1. In a device for use by a human in a body of water, a support structure having a buoyancy in water sufficient to support a human on the body of water, a water 20 squirter carried by the support structure and having piping means adapted to be disposed in the body of water in a region in the vicinity of the support structure and also including a member adapted to be engaged by the human for operation of the same, said water squirter 25 being positioned on the support structure so that the water squirter can be engaged and operated by the human while the human is being supported on the body of water by the support structure so that squirts of water can be directed from the water squirter at various 30 support structure while the single human is using the angles above the surface of the water, said support structure being comprised of a tubular member which defines the periphery of the support structure, said support structure having an upper surface and including a

5,231,951

support area member within the confines of the tubular member and disposed below the upper surface for supporting a major portion of the human body, said support area member being in the form of a seat adapted to receive the buttocks of a human in a seated position, said support structure being provided with an opening adjacent the support area so that the legs of the human can extend therethrough and be utilized for paddling the device from one location to another in the body of water.

8

2. In a device for use by a single human in a body of water, an inflatable flexible ring support structure defining the periphery of the support structure and having a centrally disposed opening therein, valve means carried by the support structure for introducing an inflation medium into the support structure to inflate the same, said support structure when inflated having a buoyancy in water sufficient to support only a single human on the body of water, a water squirter carried by the support structure and having piping means adapted to be disposed in the body of water in a region in the vicinity of the support structure and also including a member adapted to be engaged by the single human for operation of the same, said water squirter being movably positioned on the support structure so that the water squirter can be engaged and operated by the single human and moved relative to the support structure through various positions including raising above the support structure on the body of water so that squirts of water can be directed from the water squirter at various angles above the surface of the water.

40

45

50

55

60